

A G E N D A  
BOARD OF APPEALS - TOWN OF BRIGHTON  
AUGUST 3, 2022

Due to the public gathering restrictions because of COVID-19 and the adoption of Chapter 417 of the laws of 2022, this Zoning Board meeting will be conducted remotely beginning at 7:00 pm or as soon thereafter as possible. Members of the public will be able to view the meeting via Zoom.

Written comments may be submitted to Rick DiStefano, Secretary, Brighton Town Hall, 2300 Elmwood Avenue, Rochester, NY 14618 via standard mail and/or via e-mail to [rick.distefano@townofbrighton.org](mailto:rick.distefano@townofbrighton.org).

Applications subject to public hearings are available for review on the town's website no later than twenty-four hours prior to the meeting.

The public may join the Zoom meeting and share comments with the Board. For Zoom meeting information, please reference the town's website at <https://www.townofbrighton.org> prior to the meeting.

7:00 P.M.

CHAIRPERSON: Call the meeting to order.

SECRETARY: Call the roll.

CHAIRPERSON: Agenda Review with Staff and Members

CHAIRPERSON: Approve the minutes of the July 6, 2022 meeting. **To be done at the September 7, 2022 meeting.**

CHAIRPERSON: Announce that the public hearings as advertised for the BOARD OF APPEALS in the Daily Record of July 28, 2022 will now be held.

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[8A-01-22](#) Application of John Inzinna and Jacylyn Whitney, owners of property located at 325 Antlers Drive, for an Area Variance from Section 207-2A to allow a 6.5 ft. high fence in a front yard area where a maximum 3.5 ft high fence is allowed by code. All as described on application and plans on file.

[8A-02-22](#) Application of Michael Jachles, owner of property located at 135 Edgemoor Road, for an Area Variance from Section 205-2 to allow a deck to extend 6 +/- ft into the 40 ft. rear setback required by code. All as described on application and plans on file.

[8A-03-22](#) Application of Meaghan Fee Spencer, owner of property located at 111 Hampshire Drive, for an Area Variance from Section 203-2.1B(7) and 203-9A(4) to allow an air conditioning unit to be 4 ft. from a lot line in lieu of the minimum 5 ft. required by code. All as described on application and plans on file.

[8A-04-22](#) Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner of property located at 3108 East Avenue, for a Use Variance from Section 203-44 to allow a gas station with convenience store to be located in a BE-1 Office

and Office Park District where not allowed by code. All as described on application and plans on file.

[8A-05-22](#) Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner of property located at 3108 East Avenue, for an Area Variance from Section 207-6B to allow an accessory structure (gas canopy) to be located in a front yard in lieu of the rear yard as required by code. All as described on application and plans on file.

[8A-06-22](#) Application of PEMM, LLC, contract vendee, and Bristol Valley Homes, LLC, owner of property located at 3108 East Avenue, for Area Variances from Section 205-18 to 1) allow parking of vehicles to within 2 ft. for a side lot line (north) where a 10 ft. setback is required by code, and 2) allow paved areas / aisles up to the front lot line where a 20 ft. setback is required by code. All as described on application and plans on file.

CHAIRPERSON: Announce that public hearings are closed.

NEW BUSINESS:

NONE

OLD BUSINESS:

[5A-01-22](#) Application of Reza Hourmanesh, architect, and Guiyan Li, owner of property located at 2720 West Henrietta Road, for an Area Variance from Section 205-12 to allow for 45 parking spaces in conjunction with a new grocery store in lieu of the minimum 55 parking spaces required by code. All as described on application and plans on file. **TABLED AT THE MAY 4, 2022 MEETING - ADJOURNED AT APPLICANTS REQUEST**

[5A-02-22](#) Application of Reza Hourmanesh, architect, and Guiyan Li, owner of property located at 2720 West Henrietta Road, for an Area Variance from Section 205-7 to allow for impervious surface area to increase, after site modifications, from 83.2% to 84.9% in lieu of the maximum 65% allowed by code. All as described on application and plans on file. **TABLED AT THE MAY 4, 2022 MEETING - ADJOURNED AT APPLICANTS REQUEST**

PRESENTATIONS:

NONE

COMMUNICATIONS:

Letter from Pamela and Scott Stewart, 474 Allens Creek Road, dated July 17, 2022, in opposition to applications 8A-04-22, 8A-05-22 and 8A-06-22, 3108 East Avenue.

Letter from Julie Jackson-Ray, 3861 Elmwood Avenue, dated July 18, 2022, in opposition to applications 8A-04-22, 8A-05-22 and 8A-06-22, 3108 East Avenue.

Letter from Nancy Williams and Carl Sardegna, 999 Allens Creek Road, dated July 19, 2022, in opposition to applications 8A-04-22, 8A-05-22 and 8A-06-22, 3108 East Avenue.

Letter from Bruce and Pam Baker, 500 Allens Creek Road, dated July 19, 2022, in opposition to applications 8A-04-22, 8A-05-22 and 8A-06-22, 3108 East Avenue.

Letter from Jean Daimath, East Avenue, dated July 28, 2022, with comments and concerns regarding applications 8A-04-22, 8A-05-22 and 8A-06-22, 3108 East Avenue.

Letter, with attachments, from Bridget Stone, 110 Allens Creek Road, with comments and concerns regarding applications 8A-04-22, 8A-05-22 and 8A-06-22, 3108 East Avenue.

Letter from Megan Henry, 980 Allens Creek Road, dated August 1, 2022, in opposition to applications 8A-04-22, 8A-05-22 and 8A-06-22, 3108 East Avenue.

Letter from Linda Stevenson, 12 Creekdale Lane, with questions and objections regarding applications 8A-04-22, 8A-05-22 and 8A-06-22, 3108 East Avenue.

Letter from Tyler Wolk, 3161 East Avenue, in opposition to applications 8A-04-22, 8A-05-22 and 8A-06-22, 3108 East Avenue.

Letter from Peter J. Weishaar, Partner, McConville, Considine, Cooman & Morin PC, dated August 2, 2022, representing Robert and Karen Bentley, owners of property at 3939 Elmwood Avenue, in opposition to applications 8A-04-22, 8A-05-22 and 8A-06-22, 3108 East Avenue.

PETITIONS:

NONE

July 15, 2022

To: Town of Brighton Planning Board

Re: 5P-NB2-22 Application of Bristol Valley Homes, LLC, owner, and PEMM, LLC

Dear Planning Board,

We're writing to express our strong opposition to granting a use variance for the proposed Quicklee's gas station at 3108 East Avenue. The size and scope of the proposed business, the intended hours of operation, and the proposed 17' high x 22' x 44' lit canopy would not only be a lasting detriment to the surrounding residential district but would further result in the permanent, allowable use of the parcel as a gas station which is opposed by neighboring residents. Gas station businesses should only be allowed in Brighton where permitted by existing zoning, and preferably within our commercial districts. We therefore request that any variances for use, parking or other requirements of this proposal not be granted. We reside in an area of single-family homes, senior housing and schools. A new gas station is not presently permitted under our zoning law and is not supported by the community members who would bear its negative impacts.

The purpose of zoning is sometimes misunderstood as being designed to reflect or fit conditions of use that presently exist, but we know its best use is as a tool that enables a community to pursue a vision for its future. People sometimes argue against reducing FAR or increasing minimum lot size when enacting changes would make what already exists non-conforming. But the critical point is that zoning allows towns and residents to influence the incremental changes they want to see realized going forward.

The right to operate a gas station at 3108 East Avenue expired many years ago and is not within our community's vision for our future. If demand for a gas station was high enough among community members, the property would not have sat idle for as long as it has. It's been 7 years since gas pumps operated on the site and 5 years since automotive service ceased. The right for preexisting, non-conforming status to apply to this parcel has clearly expired. Additionally, public policy and the automotive industry are moving toward a future of electric vehicles charged primarily at home in residential districts. It makes no sense to override the existing zoning applicable to this property to allow a prohibited use, or to grant variances for a project residents are steadfastly opposed to, especially when 10 years from now, the business of selling gas is expected to be in sharp decline.

Upholding the existing zoning regulations provides us with an opportunity to optimize commercial and residential development in a way that it is both beneficial to residents and forward looking. Allowing this proposal by granting Quicklee's a variance for use would have the opposite effect.

Sincerely,

Pamela and Scott Stewart  
474 Allens Creek Road  
Rochester, NY 14618







Jeff Frisch <jeff.frisch@townofbrighton.org>

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## Fwd: (5P-NB2-22 Application by Bristol Valley Homes and Quicklee')

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Rick DiStefano <rick.distefano@townofbrighton.org>  
To: Jeff Frisch <jeff.frisch@townofbrighton.org>

Tue, Jul 19, 2022 at 4:19 PM

----- Forwarded message -----

From: **Nancy Williams** <nwilliamsuae@aol.com>  
Date: Tue, Jul 19, 2022, 3:15 PM  
Subject: (5P-NB2-22 Application by Bristol Valley Homes and Quicklee')  
To: rick.distefano@townofbrighton.org <rick.distefano@townofbrighton.org>

Dear Mr Distefano,

My husband and I are the first house on the left from East Ave on Allens Creek Road. (#999). It makes utterly no sense to add a facility like a Quicklee anywhere near this neighbor. ...and it is impossible to imagine any valid reason to grant a zoning variance that would allow such a facility here. The normal traffic does not need an emergency gas fill...(there are many gas stations within a very short distance...in commercial areas where they belong, nor would anyone have a desperate need for whatever they will be selling. We are surrounded by proper commercial areas where all of our needs and theirs can be met. And a large lighted awning...into the wee hours of the morning...or is it all night??? is the last thing a lovely residential neighborhood like this needs. Our neighborhood is utilized for tricycles, prams, first bikes, and casual walks. Cars zooming in and out to a Quicklees...for a quick fix of something...does not trump the quiet needs of this residential neighborhood. Please consider the already enormous taxes we pay, and do not let the taxes that a Quicklees might pay ...distort your thinking.

Many thanks  
Nancy Williams  
Carl Sardegna



3861 Elmwood Avenue  
Rochester, NY 14610  
July 18, 2022

To: Brighton Planning Board  
From: Julie Jackson-Ray  
Re: property Variance

The property at 3108 East Avenue is seeking a variance to establish a service station. I am opposed to the variance being granted. East Ave is a distinguished boulevard in Rochester. There are no other commercial retail businesses operating along East Avenue for several miles and this one is not in keeping with the norms of the area.

Brighton has strict rules on such items as signage, in order to preserve the neighborhood aesthetic of the town. Simple signage is much less objectionable than a service station and convenience store that is open way past time when the neighborhood is incredibly quiet. If the variance is granted, there will undoubtedly over flow from the station into the neighborhood, disrupting the ambiance that we appreciate. If the Planning Board is truly interested in maintaining an promoting an atmosphere of pleasant neighborhoods, this is a step in the wrong direction.

My husband and I have lived at 3861 Elmwood Ave for 32 years. We worked with Sandra Frankel on extending the sidewalk along Elmwood from Brookside to East Ave. I never could have imagined how much a positive impact the sidewalk has made in our neighborhood. It is used daily by young and old. Contrary to this having cars entering and exiting the station, it's bright lights on into the late evening, and the potential negative aspects of having alcohol for sale. Simply stated, the service station adds nothing to the neighborhood, only detracts.

The service station does not serve the needs of the area, and will only be a permanent eyesore. The current abandoned service station is already offensive. Moreover, it is my understanding that no residential neighbors have been contacted by those seeking the variance as to their opinions on the use of the property. It is clear that there is little, if any, support from those living in the area.

I strongly encourage the Planning Board to reject the request. Additionally, I hope the Planning Board goes a step further and seek some use for the property that is in keeping with the neighborhood, and actually enhances the community. The proposal does neither of these. Reject the application.

Sincerely,

  
Julie Jackson-Ray







Jeff Frisch <jeff.frisch@townofbrighton.org>

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## Quicklee's Service Center--3108 East Avenue, Town of Brighton--Application No. 5P-NB2-22

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Baker, Bruce <BBaker@nixonpeabody.com>

Tue, Jul 19, 2022 at 10:34 PM

To: "jeff.frisch@townofbrighton.org" <jeff.frisch@townofbrighton.org>

Dear Mr. Frisch—we are residents of [500 Allens Creek Road](#), and have lived at this address for 32 years. While our front yard is in the Town of Pittsford, a portion of our back yard is part of the so-called “Old Mill Parcel” and is within the Town of Brighton. We pay taxes in both towns, and one of our daughters went to Brighton High School and another to Pittsford Sutherland (at different times). We have watched, over these many years, as Allens Creek Road (“ACR”) has become increasingly busy (my personal theory is that when the Can of Worms was closed for rebuilding, thousands of commuters “discovered” the alternative route of using ACR as a shortcut to get to Monroe Avenue and Clover Street and that it never again returned to being a road primarily serving Allendale Columbia School and a residential neighborhood). We have objected to the development of the Whole Food Plaza on Monroe Avenue because it is disproportionately large for its site and because of the amount of traffic that it will draw, not just customer cars but delivery trucks, many of which will arrive and leave during the night.

Although the Town of Brighton did not stand up for its residents with respect to the Whole Foods Plaza, the same government has the opportunity to salvage its reputation by denying the variance application requested by the Quicklee's developer for the [3108 East Avenue](#) site. In some important respects, the presence of a 24/7 service station and convenience store at the end of ACR and Elmwood Avenue would be even more damaging to the character of the neighborhood than the Whole Foods Plaza, because it will attract customers during the nighttime from I-490 and neighboring towns, and will increase traffic during the daytime when buses and cars are entering and leaving the Allen Creek School. My mother and father-in-law were both residents of The Friendly Home during their last years, and it was an oasis of quiet that they both treasured. Having worked from home for the past two years, I have a new appreciation for the number of fire trucks and ambulances that use ACR. I can similarly note that I cannot remember seeing a sheriff's car parked along ACR during this time monitoring speed, and that I have seen cars rocket past our house at 50-60 mph, often at night. All of these considerations, in our view, militate against granting the application for a zoning variance for a 24/7 gas station and convenience store. There is no justification, given the proximity of gas stations and grocery and drug stores on Monroe Avenue, for a 24/7 gas station and convenience store in the midst of the Brookside neighborhood and on the same side of the street as a fire station, nursing home and elementary school. Were this not such a serious matter, it would seem almost laughable to view an application like this as meritorious given how utterly incompatible the proposed use is compared with the adjacent users. A final point: would the Brighton Police Department have jurisdiction over this facility, or would the Sheriff be expected to patrol it? It is obvious by watching the news that 24/7 gas stations and convenience stores are a magnet for armed robberies, particularly at night. This would seem to be an especially attractive location for potential armed robberies, since someone could “hit” the store and then quickly escape onto I-490—just what we need in our neighborhood!

Please deny this application!

Respectfully,

Bruce and Pam Baker

[500 Allens Creek Road](#)

[Rochester, NY 14618](#)



July 17, 2022

To: Town of Brighton Zoning Board

Re: 5P-NB2-22 Application of Bristol Valley Homes, LLC, owner, and PEMM, LLC

Dear Brighton Zoning Board,

We're writing to express our opposition to granting a variance for use for the proposed Quicklee's gas station and mini-mart at 3108 East Avenue. The size and scope of the proposed business, the intended hours of retail operation, and the proposed 17' high x 22' x 44' lit canopy would not only be a lasting detriment to the surrounding residential district but would further result in the permanent, allowable use of the parcel as a gas station and retail store—a use that is strongly opposed by neighboring residents. Gas station businesses should be permitted in Brighton only where allowed under existing zoning law, and preferably, within a commercial district. We therefore request that any variance for use, parking or other requirement of this proposal not be granted. We reside on Allen's Creek Road in an area of Brighton comprised exclusively of single-family homes, senior housing and schools. No commercial businesses operate within one mile, in any direction, of this site. A new gas station and convenience store at 3108 East Avenue is not permissible under Brighton's existing zoning law, not supported by the community members who would bear its negative impacts, and not appropriate for this residential district. The proponent does not seek relief of hardship due to a unique condition on the parcel; rather, the parcel was purchased with intent to establish a non-permitted use. The burden of compliance is strictly theirs. It is not the neighbors' nor the Town's problem to solve.

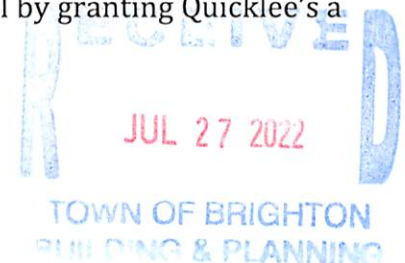
The purpose of zoning is sometimes misunderstood as being meant to reflect or fit conditions of use that presently exist, however its best use and purpose is as a tool that enables a community to pursue a vision for its future. For example, reducing FAR or increasing minimum lot size may make what already exists non-conforming but both effectively control future density. Whether incentive or restrictive, zoning allows towns and residents to influence incremental change they want to see realized going forward.

The right to operate a gas station at 3108 East Avenue expired many years ago and that use is not consistent with our community's vision for our future. If demand for a gas station was high enough among area residents, the property would not have sat idle for as long as it has. It's been 7 years since gas pumps last operated on the site and 5 years since automotive service ceased, therefore, no right to preexisting, non-conforming status applies. Furthermore, public policy and the automotive industry are moving toward a future of electric vehicles which will be charged at home in residential areas. It makes no sense to override the zoning that exists for this property to allow a prohibited use, or to grant variances for a project that residents are steadfastly opposed to, especially when ten years from now, the business of selling gas is expected to be in sharp decline.

Upholding existing zoning regulations provides Brighton and its residents the opportunity to optimize residential and commercial development in a way that is both beneficial to community members and forward-looking. Allowing this proposal by granting Quicklee's a variance for use would have the opposite effect.

Sincerely,

Pamela and Scott Stewart  
474 Allen's Creek Rd., Rochester 14618





On Tue, Jul 19, 2022 at 4:19 PM Rick DiStefano <[rick.distefano@townofbrighton.org](mailto:rick.distefano@townofbrighton.org)> wrote:

----- Forwarded message -----

From: **Nancy Williams** <[nwilliamsuae@aol.com](mailto:nwilliamsuae@aol.com)>

Date: Tue, Jul 19, 2022, 3:15 PM

Subject: (5P-NB2-22 Application by Bristol Valley Homes and Quicklee')

To: [rick.distefano@townofbrighton.org](mailto:rick.distefano@townofbrighton.org) <[rick.distefano@townofbrighton.org](mailto:rick.distefano@townofbrighton.org)>

Dear Mr Distefano,

My husband and I are the first house on the left from East Ave on Allens Creek Road. (#999). It makes utterly no sense to add a facility like a Quicklee anywhere near this neighbor. ...and it is impossible to imagine any valid reason to grant a zoning variance that would allow such a facility here. The normal traffic does not need an emergency gas fill...(there are many gas stations within a very short distance...in commercial areas where they belong, nor would anyone have a desperate need for whatever they will be selling. We are surrounded by proper commercial areas where all of our needs and theirs can be met. And a large lighted awning...into the wee hours of the morning...or is it all night??? is the last thing a lovely residential neighborhood like this needs. Our neighborhood is utilized for tricycles, prams, first bikes, and casual walks. Cars zooming in and out to a Quicklees...for a quick fix of something...does not trump the quiet needs of this residential neighborhood. Please consider the already enormous taxes we pay, and do not let the taxes that a Quicklees might pay ...distort your thinking.

Many thanks  
Nancy Williams  
Carl Sardegna







Rick DiStefano <rick.distefano@townofbrighton.org>

JUL 28 2022

## quicklee's 3108 East Ave Project

Jean Dalmath <jdalmath@gmail.com>  
To: rick.distefano@townofbrighton.org

Thu, Jul 28, 2022 at 5:21 PM

Dear Rick, I am writing in response to the requests for variances in front of the zoning board on Aug 3 for the proposed Quicklee's gas station at 3108 East Ave.

I happened to see the plans when I was searching for info on when the East Ave sidewalk would be completed. I had no idea that this project was being proposed and it is of great concern for many reasons.

I have lived down the street on East Avenue for 27 years. I had one grandchild who attended Allens Creek School and now another starting there in September. My daughter went to Allendale Columbia and I was a trustee of the school. We drive through that intersection daily. We walk in that area. We bike in that area. What happens at that intersection impacts our lives.

I frequented Gordy's for years for car inspections, repairs, and full-service gas. It was a small neighborhood station with historic character that fit into the neighborhood. It sold no alcohol or cigarettes, just soft drinks and water, and car repairs.

I appreciate the interest in restoring that bldg., which has become an eyesore. I appreciate the fact that it is a local company expanding its business. However, the proposals I reviewed for a convenience store/gas stn, state repeatedly that there will be NO adverse or undesirable changes. I strongly disagree with that, for the reasons I note below. From traffic and congestion and the associated safety concerns, to lit signage and lights, the sale of alcohol, and so-called improvements of canopies and lighting make this highly undesirable commercial project that does not blend with the neighborhood and would have negative impact on quality of life and housing values in this residential area. This is the wrong project in the wrong place.

### Traffic

- I see they checked not increasing traffic. Not sure how that can be if they say they feel they can make a profit. I doubt their statement on not creating destination traffic, as they would need more traffic to sustain the business. The extended hours and days brings people to a place on weekends where they would normally not go.
- When Gordy's was open, during peak hours, traffic was a problem. Sometimes you risked your life trying to get in and out of there. Now there will be more traffic on top of the lines on East of cars waiting to pick up kids, and school buses in front of AC school. And everyone else.
- With the proposed size of this store, there will also be steady traffic for deliveries of gas and food and beer, which are big trucks. I have never seen a small Budweiser truck.
- PLUS, since this is part of a chain, are they using large trucks serving multiple properties with deliveries? Where are they parking to unload?
- During what hours do deliveries take place? Where do they park? 5 AM open time is very early and I suspect all that traffic will generate noise.
- As for entering and exiting, it is not clear to me from the rendering, is there one driveway or two? When Gordy's was open this was of course a mess getting in and out. And that had no convenience store so I can only imagine that the traffic, near an elementary school is going to be further backed up. And why is the sidewalk not completed on the other side of the street?
- More traffic will be a greater danger to kids at Allens Creek school. It may be serving people who typically drive by but when they are stopping and entering and exiting it is creating a different kind of traffic and congestion.
- Kids walk to and from school and bike past that area. This is not safe walking by a convenience store with potentially erratic traffic and a lot for drivers to look for as they try to merge into traffic.

### Future changes

- I see the proposed hours of operation are 5AM to 10PM? Could that change in the future w/o a zoning application? e.g. become a 24 hour operation? I see some of their locations are open til 11PM, another undesirable change.

### Goods Sold

- This is primarily a residential area. With two primary schools nearby. The availability of alcohol is a big problem. And cigarettes? And with two colleges, we don't need another destination for alcohol combined with the excessive speeds at which cars are already going on East Ave.

### Signage / Lighting

- A structure such as this is better located on a commercial intersection.
- There is nothing in the proposal that I saw on types of signage. Is it lit? And where is it? Entrances and exits? That's an eyesore and an issue especially early morning and late night, espec if this is 7 days a week. A commercial bldg that is all lit up, would certainly create a significant undesirable change in the neighborhood. The commercial aspects of the Friendly Home are not visible from the street. This is residential, people live there even though it is also a place of employment it is hidden and doesn't generate a huge amt of constant traffic. And the fire station also is not subject to constant traffic and lights. On the original rendering I saw there was no lit signage on the canopy and no other signage on the bldg except the quicklee logo, and we know these places get littered w/all kinds of advertising signs, which are eyesores. Flashing ATMs lights, lottery tix you name it.
- Are they outsourcing the referenced breakfast foods to some other chain brand like Dunkin Donuts that would have any additional lit signage? They offer Dunkin in other properties from what I saw. Would this include more neon signs?
- Canopies and neon signage lit for hours 7 x a week, is not complementary of a historic bldg or the neighborhood character.
- What other pole lighting is being proposed? Anything additional would also be an eyesore.

### Parking

- 10 parking spaces is a lot.
- How many people are staffing the location? Where are they parking? And where would trucks park? On the street?

### Crime / Safety

- Considering the location just off the expressway, I am very concerned about crime, which is common at convenience stores. What security do they have and staffing to prevent this? [https://www.cspdailynews.com/company-news/c-stores-are-4th-most-common-location-violent-crime#:~:text=The%20FBI%20reported%20137%2C556%20total,5%25%20were%20at%20gas%20stations<https://urldefense.proofpoint.com/v2/url?u=https-3A\\_\\_www.cspdailynews.com\\_company-2Dnews\\_c-2Dstores-2Dare-2D4th-2Dmost-2Dcommon-2Dlocation-2Dviolent-2Dcrime-23-3A-7E-3Atext-3DThe-2520FBI-2520reported-2520137-252C556-2520total-2C5-2525-2520were-2520at-2520gas-2520stations&d=DwMFaQ&c=4sF48jRmVAe\\_CH-k9mXYXEGfSnM3bY53YSKuLUQRxhA&r=J\\_TZeiNhWHRQrxdBLFBxIKUep8JPY24fkBjRf5sxFQs&m=-ha2UgqLHgnr9g7\\_DbipK1\\_HeYhKtBYA7QY1uH4Gd-w&s=A0TJfh-obvXawPGylSN-gHF3fKGIVITcPJ3IRTq79ns&e=>](https://www.cspdailynews.com/company-news/c-stores-are-4th-most-common-location-violent-crime#:~:text=The%20FBI%20reported%20137%2C556%20total,5%25%20were%20at%20gas%20stations<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.cspdailynews.com_company-2Dnews_c-2Dstores-2Dare-2D4th-2Dmost-2Dcommon-2Dlocation-2Dviolent-2Dcrime-23-3A-7E-3Atext-3DThe-2520FBI-2520reported-2520137-252C556-2520total-2C5-2525-2520were-2520at-2520gas-2520stations&d=DwMFaQ&c=4sF48jRmVAe_CH-k9mXYXEGfSnM3bY53YSKuLUQRxhA&r=J_TZeiNhWHRQrxdBLFBxIKUep8JPY24fkBjRf5sxFQs&m=-ha2UgqLHgnr9g7_DbipK1_HeYhKtBYA7QY1uH4Gd-w&s=A0TJfh-obvXawPGylSN-gHF3fKGIVITcPJ3IRTq79ns&e=>)
- Again, this is near schools, where and children and families should be able to walk and bike along East Ave, on what is except for the fire stn, a residential neighborhood. This is not Winton and East or Elmwood and Monroe with strip malls and consolidated services. This is a neighborhood. Traffic during these excessive hours increases danger for cyclists, pedestrians and motorists. And the nature of the business, selling alcohol and unhealthy fast food, is not an asset to our neighborhood.

I appreciate your time and would respectfully ask that these variances not be approved as they stand. There are clearly too many questions yet to be asked that neighbors deserve answers to.

Thank you.

Jean Dalmath  
East Ave  
Rochester NY 14618  
jdalmath@gmail.com



Town of Brighton  
Zoning Board of Appeals  
RE: ZBA Applications: 8A-04-22; 8A-05-22; 8A-06-22



To Whom It May Concern,

My husband Michael, our four children and I have lived at 1110 Allens Creek Road since 2005. We know some of the history of the property at 3108 East Avenue because we live directly across the street. When we moved in, Gordy's was quietly operating in the 3108 East Ave. building primarily as an auto repair shop, with the occasional gas customer. The hours of operation were 7am to 6pm, reasonable for a residential area. While the property was operated as a gas station in past years, does not mean that Quicklees business model, site plan and variance requests are appropriate use in 2022 and beyond.

In reference to Use Variance Application 8A-04-22 (I will address the area variances in a second letter) regarding § 203-44 Permitted and conditional uses.

The burden of proof is on the applicant. There is significant evidence that there is no hardship, and any perceived hardship is self-created.

**[1] Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence.**

*False: Mr. Romeo purchased the property in October of 2018 knowing full well that the use variance had run out and must not have done due diligence on the expected return on investment before purchasing. He also knew that this was a designated landmark and as a property developer, he would have known the restrictions for reuse and improvement to the vacant site. Since 2018, Mr. Romeo has done nothing to make the property marketable. It has sat vacant for almost four years and that alone will take its toll on the building. Having lived across the street, there has been no significant landscaping or snow removal done on the property that would cost \$2870 per year. I have never seen a For Sale or For Rent sign either. Mr. Romeo has operated several real estate ventures over 40 years including Blue Chip Properties, Pacific Land Co, LP, Webster-Romeo Land Company, LLC, Romeo Properties, Romeo Land Development Inc, IFWF, and now Bristol Valley Homes. These ventures had transactions that resulted in tax warrants, judgements, foreclosures. Perhaps Mr. Romeo just isn't a good judge of a business opportunity. PEMM has not purchased the property, and they have several other opportunities in the works, so they have no alleged hardship.*

**[2] The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.**

*False: Mr. Romeo was aware of the landmark designation when he purchased the property. He also knew that most of the neighborhood is suburban and residential. There is a fire station, nursing home and an elementary school. There is no commerce. There is no evidence that Mr. Romeo has marketed this property as its intended zoning BE-1 office space. Producing a prospect list does nothing to prove he was actively trying since October 2018 to lease the property as office space. There is no place for their requested use. A convenience store with gas pumps, a monstrous overhead canopy and lights operated from 5am to 10pm in a residential neighborhood is not needed. Selling beer and cigarettes and creating extra traffic on sidewalks is dangerous to walking school children. The applicants had been told in multiple previous meetings that they needed to reach out to neighbors. The applicants intentionally did not meet with neighbors until after the May 18<sup>th</sup> Planning Board meeting was met with many neighbors reporting being blindsided by this project. A PEMM representative reluctantly met with neighbors for a 30-minute zoom call that abruptly ended when time limit ran out. There was no effort to schedule another meeting or answer any of our questions until we followed up with him a month later. He recorded the meeting and promised us a copy and suddenly can't figure out how to share it. This project*

would be a hardship to the neighborhood. The applicants are not interested in taking care of our neighborhood. They are only interested in taking advantage of it.

**[3] The requested use variance, if granted, will not alter the essential character of the neighborhood and will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, including natural features such as trees; and  
[Amended 11-14-2001 by L.L. No. 8-2001]**

This is false, the essential character of the neighborhood is at stake.

**Environment:**

As stated in the November 2017 article (attached) in Environmental Law in New York entitled Development and Redevelopment of Gas Station Properties on page 185, "Yes, you really should perform an ESA Phase II (under SEQR) because it's a gas station!". When the applicants (PEMM) were asked at several meetings about the prior UST (underground storage tanks), they were vague and mostly nonspecific in their response. This was easy information to acquire and the report from the DEC is attached. The DEC has record of their removal in 2017 but because of a gas line and water line running over parts of the tanks, they were crushed in place and the ends of the tanks were left in place to support the underground utilities so they wouldn't be compromised in the backfill process (120 tons of crushed stone). Upon removal of the concrete island where the fuel pumps were there was an obvious gasoline odor present leading to remediation and creation of NYS DEC Spill #1701645.

Potential stormwater hotspots were identified and summarized in the Green Infrastructure Rapid Assessments for Allen Creek Main Branch and Allen Creek East Branch completed by Monroe County in 2013 (attached, Appendix C, page 55). These stormwater hotspots are defined as commercial, municipal, industrial, institutional, or transport-related operations that produce higher levels of stormwater pollutants and may present a higher-than-normal risk for spills, leaks, or illicit discharges. To the extent possible and practical, potential stormwater retrofit projects identified and evaluated in this stormwater assessment are in areas, in part, to help mitigate water quality and stormwater runoff concerns from these areas. Property uses in these areas include trucking, gas stations, auto washing, storage, repair and recyclers, mini-marts, and fast-food restaurants. 3108 East Avenue is on that list.

**Physical:**

The traffic study submitted at the March 2022 planning board meeting was nothing more than 100+ pages of inaccurate or conflicting data. Synchro 11 is the standard for traffic analysis, yet in the referenced appendices, the program noted is Synchro 8 and the project is from 2018 Long Pond Rd. Apartments The report goes back and forth between real data compiled on one day – January 27 (in the middle of a covid surge and there were over 12,000 reported new cases in Monroe County the 10 days leading up to January 27) and data pulled from various and multiple software and modeling predicting gaps in traffic and forecasting traffic in 2023 post project as not significant. The model assumes the former Gordy's was a land use 945 gas station/convenience store land use showing no increased traffic which is false. Gordy's was a land use 944 gas station/repair shop. The growth factor used was from Penfield at .5 instead of Brighton at 2.0 with no evidence to use the lower number. For existing highway system, table on p.2 of the traffic study, the AADT source for East Avenue traffic was from 2016 before the lanes were reduced so the traffic was overstated when compared to actual traffic on East Avenue in 2022. How is any of this useable data? This report was unnecessarily lengthy and hard to follow the data sources let alone check the math.

The extra lighting from the proposed convenience store, and accompanying monstrosity of a 22 by 44 ft. lit canopy negates any restorative work to the building because it will be blocked by the canopy. The hours of operation will draw traffic, produce excess light and noise and potentially invite crime into the neighborhood with access to alcohol and cigarettes. The site plan you received as part of the application was not the most recent one. The one dated July 22, 2022, states that they might use asphalt roof shingles to replace the building slate roof and accompanying canopy. That is going completely backwards from their consistent promise to keep the slate roof whether repairing or replacing. It also

*shows an oversized Quicklees sign atop the canopy. The site plans have stated all along that there would not be a sign on the canopy. There are also four doors of access to the store. That seems dangerous given the parking and traffic and size of the lot.*

**[4] The alleged hardship has not been self-created.**

As stated in #1 above. This hardship is completely self-created. Mr. Romeo purchased this property in 2018 knowing the property use variance had run out and was zoned BE-1 and was a designated landmark. Mr. Romeo has done nothing to maintain the building and any disrepair has been from neglect of four years. The applicants left out significant information regarding the tank removal and DEC spill reported in 2017 as well as plans for new tanks.

Please think very carefully about what a use variance will do to this neighborhood. A use variance is forever. This project is not in line with the Brighton Comprehensive Plan.

In making your determination whether the proposed project will adversely affect the essential character of the neighborhood or other area in the vicinity of the applicant's property, please consider factors that are of vital importance to the citizens of the Town including without limitation:

- (a) The residential, and historic character and resources of the Town.
- (b) The Town's irreplaceable open space, recreation, and historic sites.
- (c) The extent of hazard to life or property that may result from the proposed project.
- (d) Health impacts.
- (e) The social and economic impacts of traffic, congestion, noise, dust, odors, emissions, solid waste generation, and other nuisances.
- (f) The impact on property values.
- (g) Whether the applicant will use a style of development that may result in degradation to the air quality, water quality, or historic, scenic, and natural resources of the Town.

I thank you for your consideration,

Bridget G. Stone, 1110 Allens Creek Road





Rick DiStefano <rick.distefano@townofbrighton.org>

## ZBA Applications 8A-04-22, 8A-05-22, 8A-06-22

1 message

Megan Henry <megan.henry100@gmail.com>  
To: rick.distefano@townofbrighton.org

Mon, Aug 1, 2022 at 12:02 PM

Dear Mr. DeStefano and the Brighton Zoning Board;

I am writing to urge the Zoning Board of Appeals to **reject** Applications **8A-04-22, 8A-05-22, 8A-06-22** by PEMM, LLC regarding the parcel located at 3108 East Avenue.

As a lifelong resident of Brighton, I am very concerned at the prospect of a gas station with convenience store being located at the intersection of East Avenue/Linden Ave/Allens Creek Rd at 3108 East Avenue. This neighborhood includes historically significant and architecturally unique homes and is a family-friendly residential neighborhood. Even when the parcel was a gas station (Gordy's closed in 2017), its hours were modest (they closed by 7pm) and were good neighbors. The limited use then - without a convenient store - meant additional traffic was minimal and there was no loitering around the store.

Importantly, the proposed development is not in conformance with the current BE-1 Office/Office Park zoning. The non-conforming use permission granted to prior owners many, many years ago, under the town's own regulations, *has expired due to non-use for over one year*. This expiration occurred in 2018 by town code, and is no surprise to any subsequent owner. This application would effectively necessitate the Board to approve a new non-conforming use variance. The neighborhood has relied on the town zoning code rules, inclusive of this expiration clause; neighbors have made residential decisions based upon such.

The proposed application, with business hours of 5am to 10pm, will distract from the residential character of the neighborhood in both its use and the activity and traffic it will effect.

The applicant told the neighbors that the fueling tankers will arrive at any hour, usually overnight, and the applicant, unfortunately, has no control over when the refueling process takes place.

Traffic of two entrances/exits so near the Allen Creek Elementary School where children are walking and crossing East Avenue is concerning. The sale of alcohol and tobacco in close proximity to this school, and Allendale Columbia, is unnecessary. Given the proximity of the subject intersection to 12 corners, less than 1.8 miles, where the same applicant, Quicklees, is proposing to place a larger gas/convenient store location, the neighborhood will be well served there in a convenient, appropriately- zoned and well-travelled location.

Installing of gas storage tanks and pumps risk disrupting the soil and potentially spread soil pollutants through the water table. The parcel's proximity to Allens Creek makes this an environmental concern. The application falsely categorizes the habitat as urban - we have fox, deer, rabbits and other animals, and the waterfowl attracted to the creekside. Oddly, the tank pad and its treatment are not indicated in the drawings.

The Applicant's most recent proposal submission does not ensure the conformance with the architectural character of the primary building; it states "replace roof with slate or asphalt". Moreover, the addition of the proposed oversized canopy will not be in keeping with the neighborhood and may actually obstruct the view of the front of the historic building. The all-night lighting will disturb the residential neighbors across the streets - the diagonal nature of the intersection means the impact will be felt in many directions.

Unfortunately, I must therefor be against the proposal and appreciate your support in helping Brighton maintain its residential neighborhoods, its pleasant character and adherence to the zoning regulations.

Sincerely,  
Megan Henry  
980 Allens Creek Road



AUG 02 2022

Rick,

I have lived at 12 Creekdale Lane for 35 years. This is the neighborhood across from the site under review for the PEMM/Quicklee's & Bristol Valley Homes (Frank Romeo) applications for zoning variances. This letter registers my questions and objections to the above stated three applications for a zoning variance.

In short, I believe that Mr. Romeo purchased the property in question in 2018 to sell it as he hasn't completed any noticeable improvements since 2018 to now.

Mr. Romeo, evidenced by the documents presented (and omitted) to the Board, apparently failed to perform the standard market analysis and any rigorous due diligence **PRIOR TO** his purchase of the gas station at 3108 East Avenue.

Mr. Romeo now wants the neighborhood to allow his sale to Quicklees to proceed which will directly and ultimately initiate a degradation of our neighborhood and lifestyle, which we all thought we would receive when we purchased our homes in Brighton where we pay our taxes.

There is also the potential for significant traffic increase as just **a mere 0.7 miles away on 31F**, in Pittsford, Kilbourn Apartments are to be completed in 2023.

Last, but certainly not least, the ZBA application documents submitted were very inaccurate in properly stating the magnitude of our neighborhood's concerns, number of proposed meetings allegedly held, and the omission of specific facts relative to the proposed gas station/convenience store. The attorney's letter, at best, glossed over or at worst, omitted these neighborhood's concerns, resulting in an inaccurate assessment of the project's impact on our neighborhood.

The discussion follows.

## **ADDITIONAL COMMENTS ON DOCUMENTS PREVIOUSLY SUBMITTED**

### **June 14<sup>th</sup> 2022 Email Exchange between Mr. Terragnoli and Megan Henry**

When Louis Terragnoli creates documents and/or responds to our questions, we have received incomplete responses. For example, in his June 14<sup>th</sup>, 2022 communication, he was asked to explain the lighting plan. He wrote a description. He stated that there would be no light spillage off the site. That this would be confirmed by a photometric plan created by a third party. Megan Henry, a property owner in our neighborhood asked, "how bright is it". Mr. Terragnoli responded, "Please see above". The level of brightness was not addressed in his response. I, for one, have not yet seen this photometric plan.



In his June 14<sup>th</sup>, 2022 document, I questioned the project's overall assumption that "...each location would serve the residents in the immediate area". As stated in this email exchange, there is a 1.8-mile distance, less than a four (4) minute drive, to the 12 Corners gas station. The residents in the immediate Brookside neighborhood and the East Avenue property owners have responded that there is no need for this gas station. Residents farther away have their favorite gas stations given their specific routes (work, gym, etc.)

This idea that 1.8 miles to get to 12 corners, is too far to drive for the residents in the immediate area, is ludicrous.

Yet later in a document, it states that it isn't necessary to develop this site for office space for there are office spaces in other neighborhoods. These neighborhood office spaces are more than 1.8 miles from our neighborhood.

It is absurd to me that 1.8 miles is necessary for us to get our gas, but going more than that to get to an office is fine! What a contradiction!! Say one thing to prove a point and then say the opposite to prove a different point. Where is the reality?

Where in Mr. Terragnoli's research of our neighborhood does it show that the majority of us want to be able to get gas right on our doorstep? As a sample size of one, one family member drives to Walmart or BJ's to get gas and another member goes to specific gas stations based on the specific route for the day. I don't believe my response or others were included in his research on the neighborhood's needs and wants.

**New Housing Construction – Kilbourn Apartments – 0.7 mile from Proposed Gas Station "Boutique"**

The addresses for these units range from 3510-3596, Potentially there will be representing an estimated increase of 173 drivers (86 units). Additionally, the apartment complex and the gas station are on the same side of the road. From there, it is only 0.3 mile to reach the highway interchange on 441.

The nearest gas station for the apartment's residents heading East, is the Marathon gas station. It is 2.5 miles from the apartments.

The anticipated completion of the Kilbourn Apartments in 2023 event represents a significant increase in traffic, danger to our schoolchildren crossing the road to get to school, an increase in noise, and increase in gas emissions pollution. So, more noise, more noxious exhaust fumes, and therefore endangering our children.

According to the Town of Brighton web site, one of the major responsibilities of the Zoning Board are "...the granting of variances". As an aside, I wish I had known that before purchasing

our home. That direct quote implies that the more variances the Zoning Board grant, the more the Town regards/compensates them. That doesn't bode well for residents who want to maintain their lifestyle that they bought into when they purchased their home and agreed to the current and future tax bills.

For just Quicklees alone, we experience the same negative impacts on our lifestyle stated in the paragraph directly above AND we add the effects of beer sales! This is yet another way for Quicklees to introduce "beer bars" in neighborhoods. Our neighborhood has experienced crime with cars being broken into. We truly don't need to have the level of crime increase due to inhibitions being decreased by the effects of drinking too much alcohol.

### **Hardship – Current Owner**

The Current Owner is **not experiencing hardship** (even including his financial losses, which he can deduct from his taxes to reduce the amount he needs to pay to the government). He didn't perform even the minimally acceptable level of market analysis, budget development or sales analysis.

For someone who states in his letter to the Zoning Board of Appeals, that he "began investing and developing properties in 1978. My companies provide *comprehensive* real estate development...to local and national retail, office, restaurant, and residential clients...During the last 44 years, I have developed and owned over 100 properties in various states.", Mr. Romeo hasn't provided evidence of his comprehensive process in these applications (8A-04-22, 8A-05-22, 8A-06-22).

I have a MBA in Marketing. My 30-year career included working at Citibank, as a marketing analyst. One of my projects was to determine if a specific site in a specific state would be a good place to add an office. I needed to do a market analysis, sales development, potential customer segmentation, and a competitive analysis. All this was linked to a budget developed so that payback would occur sooner rather than later.

For Xerox, I was a Competitive Intelligence Analyst to the then-CEO Ann Mulcahy's direct reports. For them, I needed research the viability of going into a market with a specific product. Again, market analysis, sales development, customer segmentation (a more involved analysis given that the potential customer was overseas and had different perceptions and experiences than US clients), and competitive analysis.

For Mr. Romeo, who has developed properties etc., for over 25 years, provided a list of only 186 prospects (one went by the sole description of "Ryan" – Ryan Homes, Ryan Gosling, or Robert Ryan or ...?) He stated that he started marketing this property in October 2018. That equates to three (3) years and eight (8) months of potential sales activity. Over the 42 months,

Mr. Romeo, contacted 186 people to purchase his property. This activity equates to 4.3 prospect calls per month (or one a week)!! This is not the level of activity associated with someone who wants to sell his property.

In 2018, the general public already had access to email. In addition, in 2012, Zoom was available for use with 25 participants. (Source: [https://en.wikipedia.org/wiki/Zoom\\_\(software\)](https://en.wikipedia.org/wiki/Zoom_(software))). The number of participants concurrently online has increased significantly. Surely, Mr. Romeo could have held meetings, reached out to all his business contacts from the last 25 years, to promote the sale of his gas station.

"The proximity to a firehouse and the activity and noise associated with it are also limiting factors on the property". The firehouse experiences 2,400 calls per year. Nowhere in his application is it noted.

*His "hardship" is really due to his lack of research of his own choosing. He could even have offered a commission if a referral purchased the property. Instead, one call was made per week.*

The contractor's estimate is similarly flawed. There are no pricing nor description of products included in the cost. In addition, Mr. Romeo only presented one extremely high-cost summary of an estimate, when current best practice is to receive more than one estimate – typically a minimum of three estimates are required.

Therefore, the box checked "Yes" that the owner is suffering financial hardship is incorrect.

### **Woods Oviatt Gilman Letter**

The attorney's letter: page 1 "Neighboring uses include a Brighton firehouse, the Friendly Home, and residential neighbors, with close proximity to Linden Avenue and the expressway."

Discussion: the Brighton Firehouse is only operational when there is a fire AND the **neighbors did use it as a meeting place** when we spoke with the Police regarding the increase in crime in our neighborhood.

The Friendly Home is up a hill and set back with two private residences in between the Friendly Home's driveway and the gas station entrance. The expressway and Linden Avenue ~~is~~ are farther away from the gas station than is our neighborhood.

WE, as homeowners directly across the street, are directly impacted by the activity of this proposed larger and more expansive use of the gas station versus the original usage of the 1930 building, which had no convenience store or alcohol sales.

Additionally, the attorney's document also states on page 2, 2<sup>nd</sup> paragraph, last sentence, "The nature of the business serves neighborhood and pay-by traffic such that it is not a destination



use OR NEW TRAFFIC GENERATOR. Just 0.7 miles up 31F is a new development of apartments with a forecasted 172 individuals with their cars.

Given that this proposed gas station, convenience store, with beer sales is only 0.7 miles away from the new development (expected completion 2023), how can Quicklees say that the station will not generate more traffic?

Most Importantly, they have neglected to talk about Allen Creek school which is next to the Friendly Home. There is a cross-walk for the school children right at the corner of Allen Creek and East Avenue. There isn't a crossing guard. With the proposed increase in traffic, our children may be at risk for a potentially fatal accident while crossing the road.

This document, page 2, paragraph four, "...well received by Planning Board, with a number of neighbors appearing by Zoom with questions about the proposed project and the Town's approval process." A representative from PEMM has since met with and engaged with neighbors to address questions or concerns related to the project." Didn't meet with me! Didn't know about the meetings. MISLEADING – some of us expressed our concerns and disapproval about this concept plan and any variance being granted. It isn't mentioned anywhere!

As an aside, I think it is humorous that in this same document, states "there would be no use for a day care center". Our neighborhood has had many families moving in with multiple young children! Where is their market study supporting that statement?

In the attorney's document, page 3, Section 1, third paragraph, it states, "the required investment would be \$336,000 or \$284.75/square foot for a 1,178 square foot building." While the math is accurate, the underlying assumption is not. The owner only received one contractor's bid to do the work. At the very least, good business practices suggest three (3) bids are the minimum required. What was included in this estimate? This is very misleading.

The business plan model requires, at minimum, four statistical analyses: **Gross Revenue, Payback, Net Revenue/Loss and Breakeven**. The amount charged for office space would not be the \$284.75/square foot. Once the space was rented, part of the revenue would pay back the initial cost of building/renovating the office space.

Number 3. "The requested variance, if granted, will not alter the essential character of the neighborhood".

They need to compare Quicklee's drawings to the old station...I do not know, how they can say with a straight face, that it will not alter the essential character of the neighborhood. Just the canopy alone is huge and modern . . . not in character with the neighborhood.

Number 4. Additional variances. "In addition to the use variance, the project requires **several area variances . . . gas canopy, required parking...setback**".

Any alleged hardship IS self-created. Quicklee's is ~~are~~ trying to fit a modern, more expansive entity into a space originally designed for a small neighborhood gas station with no canopy, no bright lights, no beer, and no convenience store.

*Page 5. The primary consideration is whether the benefit to the applicant outweighs the detriment to the health, safety or welfare of the neighborhood. ... There is no detriment to the neighborhood from the granting of the variances.*" The benefits cited by Betsy D. Brugg, Atty. are minimal compared to the increased traffic, increased pollution, and potential increase in current crime levels (fueled by beer consumption). There is no consideration, no neighborhood input (due in large part to the mere three (3) minutes we were allowed to speak at the Planning Board's first meeting.

Simply put, the applicant builds a boutique gas station (a smaller size to add stations to neighborhoods that are zoned not to have one and receives revenue). Again, the quality of life significantly decreases due to increased traffic in a school crossing zone, increased air pollution, increase noise, increased negative behavior (selling of beer), and the ambiance of the neighborhood is significantly reduced due to the large signage and bright lights. They say there is a study of the lights, but no neighbor has seen it.

The document states that the proposed change will not change the character of the neighborhood (page 5). All the houses in the neighborhood are from the 1940's and older. Quicklees' large signage and bright lights definitely will change the character of the neighborhood. The firehouse is a simple brick building. The Friendly Home's driveway has flowers and plants bordering it while it meanders uphill to a building out of sight from the road. Across the street is our neighborhood, complete with beautiful, manicured homes with sidewalks for walking.

The area under question is less than one-half acre. Huge gas trucks will be delivering gas along with delivery trucks to refill the shelves in the store, as well as, cars getting gas and people purchasing convenience store items including beer and cigarettes.

**Mr. Frank M. Romeo's Letter dated June 28<sup>th</sup>, 2022**

Mr. Romeo states that he is losing money. If his due diligence occurred prior to his 2018 purchase, we wouldn't be in this situation for the facts remain clear and constant. But he didn't. Now we, the neighborhood, are expected to support his losing money with a total disregard for the decrease in the quality of life we thought we were gaining when we purchased our homes

and paid the taxes. There is an implied contract with the town. ***The tax rate is assigned and the residents pay, for the quality of life the residents receive for choosing to live here.***

Please note, that while Mr. Romeo states how he will lose money, if the proposed change is approved, all the residents in this neighborhood will lose money when it comes time to sell. This is due to the decrease in property values we will experience if the application is approved. The difference between Mr. Romeo and the Brookside neighbors, is that we performed our due diligence **before** purchasing our homes. It appears from his letter; he did his due diligence **after** purchasing the gas station and now expects the neighborhood to bail him out.

**Prospect List**

*According to the file name located at the bottom left-hand corner, "R-File: 3018 Prospect\_List", there were only 183 prospects contacted. He has developed properties in many states for over 44 years. Yet there were only 183 prospects contacted. As stated earlier, one is listed as merely "Ryan".*

Why are there so many entries listed in Mr. Romeo's document under "USE" as Not Disclosed? That is faulty and misleading information.

As it turns out: over 50% of the participants backed away from the deal due to the zoning issues. So right from the beginning, over 50% of the respondents could determine that the resources associated with satisfying zoning requirements was a non-starter. (Spreadsheet excerpt follows on next page).

***Prospect List Reasoning for Non-Participation***

<b>Comments</b>	<b>Number</b>	<b>Percent of Total</b>
Not Zoned	94	51%
Not Interested	71	39%
Too Small	13	7%
Too Big	4	2%
Rent too high	1	1%
<b>TOTAL</b>	<b>183</b>	<b>100%</b>

Source: applicant supplied Prospect List

In conclusion, the health and safety of our families are threatened by the combination of services offered by this boutique gas station. Our standard of living is threatened by increased noise and pollution.

While I understand the need for the town to generate more revenue, it should be an honest endeavor that doesn't knowingly put its residents, and especially their children in harms' way.

Zoning Board of Appeals  
Town of Brighton  
Brighton Town Hall  
2300 Elmwood Avenue  
Rochester, NY 14618  
[rick.distefano@townofbrighton.org](mailto:rick.distefano@townofbrighton.org)



RE: 8A-04-22, 8A-05-22, 8A-06-22

To the Board:

My name is Tyler Wolk and I reside at 3161 East Avenue. Since I am unable to attend the August 3rd meeting, I am writing to communicate my concern and opposition to the applications of PEMM, LLC and Bristol Valley Homes, LLC (8A-04-22, 8A-05-22, 8A-06-22) for a use variance (gas station and convenience store) and two area variances (accessory structure in front yard; and, parking within setback required by code) at 3108 East Avenue.

First, I am concerned that the proposed variances will disrupt and corrode the character of the area. East Avenue is a historic residential neighborhood. The character of the area has been preserved, in part, by planning and zoning restrictions, such as the restrictions and setbacks that preclude commercial structures, and parking and pavement in front yards. The Application, which includes a new accessory structure with a large LED lit canopy, does not match the character of the area. I am concerned that the gas station will create noise and light pollution, and invite loitering around our neighborhood.

Second, I am concerned that the gas station will have a negative environmental impact on the area, and specifically on Allens Creek. My home overlooks Allens Creek. As described in the *Envision Brighton 2028-Comprehensive Plan*, "stream corridors including Allens Creek, Buckland Creek and Red Creek are important natural features in Brighton. Watershed urbanization is degrading water quality, stream ecology, and biodiversity." (p. 20.) Additionally, if we as a society have learned anything from past experience, it is that the oil and gas industry cannot operate without negative environmental impacts. Spills at gas stations can range from customer or delivery fueling errors to major system component failures. I do not believe that this is a risk our neighborhood should tolerate.

Third, I do not believe that a gas station *and* convenience store is the only economic use for this parcel. The fact that the applicant is looking for *two* uses essentially proves that point. I do not believe that the applicant would encounter strong opposition to opening just a small convenience store in the existing building.

Fourth, I am concerned that the gas station, which would be situated .2 miles from the 490 expressways, will result in increased "on/off" traffic from the expressway. Increased traffic is more than an inconvenience, it creates an increased safety hazard for pedestrians (in this area, mostly children walking to and from school), and increased noise pollution.

I ask that the Board take these concerns into consideration, and I thank you for your time.

Tyler Wolk





**McCONVILLE CONSIDINE  
COOMAN & MORIN PC**

ATTORNEYS & COUNSELORS AT LAW

**Peter J. Weishaar, Partner**

Direct Dial: (585) 512-3542

Office Fax: (585) 546-7218

E-Mail: [pweishaar@mccmlaw.com](mailto:pweishaar@mccmlaw.com)

August 2, 2022

**BY EMAIL AND MESSENGER**

Zoning Board of Appeals  
Town of Brighton  
c/o Rick DiStefano, Senior Planner  
2300 Elmwood Avenue  
Rochester, New York 14618



**RE:     Application of Bristol Valley Homes LLC and PEMM, LLC  
         3108 East Avenue  
         Application Nos.: 8A-04-22; 8A-05-22; 8A-06-22**

Dear Board Members:

We represent Robert and Karen Bentley in connection with the above-referenced applications (the "Applications") pending before the Town of Brighton Zoning Board of Appeals (the "Board"). Mr. and Mrs. Bentley reside at 3939 Elmwood Avenue, Rochester, New York 14610. Their property is on the corner of Elmwood and East Avenues, and across from the property that is the subject of the Applications (the "Subject Property").

The Applications are being made on behalf of the current owner of the Subject Property, Bristol Valley Homes LLC ("Bristol Valley Homes"), and the contract vendee of the Subject Property, PEMM, LLC (the "Developer", together with Bristol Valley Homes, the "Applicants"), and include requests for area variances related to the proposed installation of a gas station canopy, and a request for a use variance to permit the Subject Property to be used as a gas station and convenience store. As demonstrated below, the Applicants have failed to meet their burden of proof, requiring the Board to deny the Applications.

**I.     INTRODUCTION**

The Subject Property is located in the Town of Brighton's BE-1 Zoning District (Office and Office Park). The properties across the street and south of the Friendly Home are located in the Town of Brighton's RLA Zoning District (Residential Low Density "A"), and generally consist of single-family residences. The other neighboring properties located within the BE-1 Zoning District that are adjacent to the Subject Property include uses that would otherwise be permitted in residential districts within the Town of Brighton (e.g., fire station to the north would be a conditionally permitted use in the RLA Zoning District [Brighton Town Code §203-2.1(C)(4)];

residence to the south would be permitted in the RLA Zoning District [Brighton Town Code §203-2.1(A)(1)]. Thus, the entire neighborhood has a residential character.

For over 80 years, the Subject Property was operated as a gas station. As such it was considered a pre-existing nonconforming use under the Brighton Town Code. The gas station use continued until the prior owner ceased operations in approximately 2017. Having ceased operation for more than one year, it can no longer be operated as a gas station. [BRIGHTON TOWN CODE §225-13(D) (any nonconforming use of a building “shall not be reestablished if such use has been discontinued for any reason for a period of one (1) year or more, or has been changed to or replaced by a conforming use....”)].

According to a deed filed in the Monroe County Clerk’s Office, Bristol Valley Homes acquired the Subject Property from Kellymarts, Inc. (“Kellymarts”) on October 12, 2018. The Applicants now seek to reestablish and expand the prior gas station use to include a convenience store and a large canopy in front of the historic cottage-style building. Mr. and Mrs. Bentley—together with a number of their Brookside neighbors—respectfully request this Board to deny the Applications for the reasons set forth below, together with the testimony expected at the public hearing on August 3, 2022.

## **II. AREA VARIANCES**

The Applications include two area variances related to the placement of a canopy in the front yard of the Subject Property. This is at least the third request for a canopy at the Subject Property, and as with the prior requests, this is the request most strongly opposed by Mr. and Mrs. Bentley and many of their neighbors.

### **Prior Precedent**

According to the materials submitted with the Applications, the canopy is proposed to be 17 feet high, covering two gas pumps, with a width of 22 feet and a length of 44 feet (*i.e.*, covering 968 square feet). We also believe that the canopy is proposed to be illuminated.

On September 12, 1995, this Board denied Kellymarts’ request for an area variance (Application 5A-11-95) to place two smaller, 14 feet high, 20’ x 20’ canopies in the front yard of the Subject Property. We have included copies of the Board’s minutes from its meetings on August 9, 1995, and September 6, 1995, where the prior application was discussed and ultimately denied. In rendering its decision to deny the request for the canopies, this Board made the following findings:

1. That the proposal of building canopies would be a total change in the character of a residential neighborhood;
2. The construction of the canopies would create an undesirable change in the character of the neighborhood and would be a detriment to nearby properties;
3. The request for the building of the canopies is a substantial variance in changing the character and the use of the property;
4. There was a large amount of neighborhood opposition; and
5. That the proposal would enlarge, alter or extend the gasoline service station and the external use would be increased in violation of Article 255-13(A).

According to testimony during the 1995 public hearing, another application for a canopy was denied by the Board roughly five or six years earlier. [Testimony of Mr. Randall (August 9, 1995) at 91 (“the prior effort to put a canopy up was rejected four or five or six years ago maybe and now they want another one”)].

The two shorter canopies proposed in 1995 covered less combined area than the higher single canopy now proposed (*i.e.*, 800 square feet for both canopies vs. 968 square feet for the single canopy). Mr. and Mrs. Bentley and their neighbors have many of the same concerns expressed by the neighbors in 1995. For example, there remains a concern about increased commercialization of this area, with the impact of light pollution and glare on neighboring properties. The neighbors are concerned that this will have a negative impact on their property values. There is also a concern about increased traffic and the safety of pedestrians—including many young school-aged children who walk from the surrounding neighborhood to nearby Allen Creek Elementary School. The Applicants have failed to demonstrate any basis for this Board to depart from its prior determinations with respect to the proposed canopy, and the proposed canopy is larger and more intrusive than the canopies that were previously denied.

It is well-settled that the principles of *res judicata* apply to the quasi-judicial determinations of administrative agencies such as a zoning board of appeals, “and preclude the re-litigation of issues previously litigated on the merits.” *Timm v. Van Buskirk*, 17 A.D.3d 686 (2d Dep’t 2005). Even where *res judicata* does not strictly apply, the Court of Appeals has held that decisions of administrative agencies, such as a zoning board of appeals, “which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious.” *Knight v. Amelkin*, 68 N.Y.2d 975, 977 (1986).

In order to depart from this Board’s prior determinations, the Board would need to explain why the present Applications are different from the prior requests for relief. The Applicants have failed to offer any proof to justify such a departure. Based on the foregoing, the Applicants’

request for area variances to place the canopy in the front yard of the Subject Property should be denied.

### **Elements Not Established**

The elements required to establish an entitlement to an area variance are well-known to this Board, but bear repeating:

In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

N.Y. TOWN LAW §267-b. The Applicants have failed to establish any of these elements.

**1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.**

In 1995, this Board determined that the prior request for smaller canopies would be “a total change in the character of a residential neighborhood” and they “would create an undesirable change in the character of the neighborhood and would be a detriment to nearby properties.” The larger illuminated canopy now proposed for this largely residential neighborhood would have an even greater impact than the ones denied by the Board in 1995. The Applicants have failed to offer any proof warranting a departure from this Board’s prior determinations made with respect to the substantially similar request in 1995.



**2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.**

Following this Board's denial of Kellymarts' request for variances for canopies in 1995, the Subject Property continued in operation as a gas station for 22 years without a canopy. In fact, the Subject Property previously operated as a gas station for over 80 years without a canopy. This demonstrates that canopies are not required for gas sales. We are unaware of any building code or other requirement mandating use of canopies for gas pumps.

**3. Whether the requested area variance is substantial.**

In denying the 1995 request for smaller canopies, this Board determined that it was "a substantial variance in changing the character and the use of the property." The canopy now proposed by the Applicants is taller and will cover 168 square feet more than both of the canopies proposed in 1995. The requested area variance for the canopy is substantial for this largely residential neighborhood.

**4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

The proposed variance will have an adverse effect or impact on the neighborhood. The addition of a large, illuminated canopy will introduce a commercial element to this residential neighborhood. The Applicants have failed to demonstrate that the requested variances for the canopy will not have an adverse effect or impact on the neighborhood.

**5. Whether the alleged difficulty was self-created.**

As an experienced real-estate developer with over 40 years of development experience, Bristol Valley Homes' principal, Frank Romeo, should have been well-aware of the zoning restrictions in place when it acquired the Subject Property in 2018. The Appellate Division has noted that, "Hardship in the context of zoning is self-imposed where the applicant for a variance acquired the property subject to the restrictions from which he or she now seeks relief." *First Nat'l Bank v. City of Albany Bd. of Zoning Appeals*, 216 A.D.2d 680, 681 (3d Dep't 1995).

**Area Variance Conclusion**

Based on the foregoing, Applicants' request for an area variance for placement of a canopy in the front yard of the Subject Property should be denied. The Applicants have failed to provide evidence warranting any departure from the Board's prior determinations with respect to the

canopy, and they have failed to meet their burden of proof to establish the elements required for any area variances with respect to the canopy.

### III. USE VARIANCE

“An applicant for a use variance bears a heavier burden of proof than one who desires relaxation of an area limitation.” *Village Bd. of Fayetteville v. Jarrold*, 53 N.Y.2d 254, 257 (1981). In order to obtain a use variance, Applicants must show “unnecessary hardship” which requires them to demonstrate the following:

In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.

N.Y. TOWN LAW § 267-b(2)(b). All four elements must be present for the applicant to receive a use variance. 2 NEW YORK ZONING LAW AND PRACTICE §29:6 at 29-13 (2008). Thus, a failure to establish any one element would be fatal to the Applicants’ use variance request. The Applicants here have failed to establish at least three of the required elements.

**1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.**

Applicants claim that after purchasing the Subject Property in 2018, Bristol Valley Homes has been actively marketing the property. However, Applicants did not include any information about the present value of the Subject Property, the asking price while it was offered for sale or rent, among other things. Applicants also do not explain how they “have continuously direct marketed this property thru our usual channels...”

In support of their claim to be unable to realize a reasonable return, Applicants supplied the Board with an estimate of the cost of renovations required to convert the property to an office use from an independent contractor. The Applicants imply that the estimate was from a neutral

third party. [See, e.g., Rich Realty Letter at 1 (referencing the “estimate for construction for \$220,000 provided by a third party contractor....”). However, the logo on Mr. Romeo’s letter is virtually identical to the logo on the construction proposal from Complete Contracting Services Group LLC. Although the address listed on Complete Contracting Services Group LLC’s estimate is 1917 Hudson Avenue, we have reason to believe that this LLC is related to both Romeo Land Development LLC and Bristol Valley Homes as all three list a principal address for service of process as 745 Titus Avenue, Annex Building, Rochester, New York 14617. Print-outs from the New York Secretary of State’s Division of Corporations website are enclosed for the Board’s reference.

In reviewing Applicants’ cost estimates for renovating the property, it is also apparent that some, if not all, of the renovations may be required even if the use variance is granted. For example, the background information under the potential scope of work notes that the current building is in disrepair. There is no insulation, no HVAC system, no interior or exterior lighting and needs new electrical service. The bathrooms are also unusable and the doors and windows are in disrepair and need to be replaced. Significantly, Applicants acknowledge that, “The building needs a complete renovation for any occupant, *no matter what the use.*” (Emphasis added). Thus, the Applicants have failed to support their claimed financial hardship with proof of the actual cost to convert the Subject Property to a permitted use above and beyond what they are likely to still need to spend if they convince this Board to grant them a use variance.

**2. That the requested use variance, if granted, will not alter the essential character of the neighborhood.**

As noted above, this Board has previously determined that the addition of small canopies would have a significant negative impact on the residential character of the neighborhood. That determination was made when the Subject Property was merely a gas station. Applicants propose to convert this property into a convenience store in addition to a gas station. Such a commercial use will generate traffic and change the essential character of this residential neighborhood.

It is also significant to note that convenience stores in the Town of Brighton are prohibited from selling gas. Indeed, the definition of “convenience store/neighborhood grocery” in the Brighton Town Code is:

A retail store serving the daily or occasional needs of the residents of the immediate area with a variety of goods such as groceries, meats, beverages, dairy products, patent medicines, sundries, tobacco, stationery, hardware, magazines and/or newspapers and having a gross floor area of less than 5,000 square feet. *Gasoline is not sold.*

BRIGHTON TOWN CODE §201-5 (emphasis added). Therefore, not only would the requested use variance alter the essential character of the neighborhood, but it would apparently create a new use that is otherwise not permitted within the Town of Brighton.

Mr. and Mrs. Bentley and many of their neighbors believe that the commercialization of this property will have a significant negative impact on their property and other surrounding properties if the variance is granted. The Bentleys are concerned about the impact of light pollution, blight, and glare on neighboring properties, including their own. There is also a concern about increased traffic and the safety of pedestrians—including many young school-aged children who walk from the surrounding neighborhood to nearby Allen Creek Elementary School. The increased traffic and activity will also increase noise. All of this will have a negative impact on property values.

**3. That the alleged hardship has not been self-created.**

As noted above, Bristol Valley Homes' principal, Frank Romeo is an experienced real-estate developer with over 40 years of development experience. As such, he should have been well-aware of the zoning restrictions in place when Bristol Valley Homes acquired the Subject Property in 2018. The Applicants claim that the hardship is not self-created, "but results from the small and limited size of the site and building, the landmark status and obsolete condition of the building, the cost of renovations required for any use, and the character of the surrounding uses, as well as the discontinuance of the long-time gas station use." [Letter of Intent at 4]. The Applicants knew or should have known about all of these facts before acquiring the Subject Property.

The Appellate Division has noted that, "Hardship in the context of zoning is self-imposed where the applicant for a variance acquired the property subject to the restrictions from which he or she now seeks relief." *First Nat'l Bank v. City of Albany Bd. of Zoning Appeals*, 216 A.D.2d 680, 681 (3d Dep't 1995). The Applicants' claimed hardship is self-created. Therefore, the Applicants' request for a use variance must be denied.

**IV. CONCLUSION**

Mr. and Mrs. Bentley intend to appear and offer testimony at the public hearing supporting their opposition to the Applications. Many of their Brookside neighbors are expected to do the same. The Bentleys oppose granting variances which would permit the Subject Property to become more commercial than it ever was. Permitting Applicants to reestablish a gas station use together with an illuminated canopy and a convenience store operation will have a significant



Zoning Board of Appeals  
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adverse impact on the neighborhood. The Bentleys respectfully request this Board to deny the Applications in their entirety.

If you have any questions, please feel free to contact me.

Very truly yours,

McCONVILLE, CONSIDINE,  
COOMAN & MORIN, P.C.



Peter J. Weishaar

PJW/

Enclosures

xc: Karen and Robert Bentley (*by email*)  
Betsy D. Brugg, Esq. (*by email*)

Town of Brighton  
Zoning Board of Appeals  
RE: ZBA Applications: 8A-04-22; 8A-05-22; 8A-06-22

To Whom It May Concern,

My husband Michael, our four children and I have lived at 1110 Allens Creek Road since 2005. We know some of the history of the property at 3108 East Avenue because we live directly across the street. When we moved in, Gordy's was quietly operating in the 3108 East Ave. building primarily as an auto repair shop, with the occasional gas customer. The hours of operation were 7am to 6pm, reasonable for a residential area. While the property was operated as a gas station in past years, does not mean that Quicklees business model, site plan and variance requests are appropriate use in 2022 and beyond.

In reference to Use Variance Application 8A-04-22 (I will address the area variances in a second letter) regarding § 203-44 Permitted and conditional uses.

The burden of proof is on the applicant. There is significant evidence that there is no hardship, and any perceived hardship is self-created.

**[1] Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence.**

*False: Mr. Romeo purchased the property in October of 2018 knowing full well that the use variance had run out and must not have done due diligence on the expected return on investment before purchasing. He also knew that this was a designated landmark and as a property developer, he would have known the restrictions for reuse and improvement to the vacant site. Since 2018, Mr. Romeo has done nothing to make the property marketable. It has sat vacant for almost four years and that alone will take its toll on the building. Having lived across the street, there has been no significant landscaping or snow removal done on the property that would cost \$2870 per year. I have never seen a For Sale or For Rent sign either. Mr. Romeo has operated several real estate ventures over 40 years including Blue Chip Properties, Pacific Land Co, LP, Webster-Romeo Land Company, LLC, Romeo Properties, Romeo Land Development Inc, IFWF, and now Bristol Valley Homes. These ventures had transactions that resulted in tax warrants, judgements, foreclosures. Perhaps Mr. Romeo just isn't a good judge of a business opportunity. PEMM has not purchased the property, and they have several other opportunities in the works, so they have no alleged hardship.*

**[2] The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.**

*False: Mr. Romeo was aware of the landmark designation when he purchased the property. He also knew that most of the neighborhood is suburban and residential. There is a fire station, nursing home and an elementary school. There is no commerce. There is no evidence that Mr. Romeo has marketed this property as its intended zoning BE-1 office space. Producing a prospect list does nothing to prove he was actively trying since October 2018 to lease the property as office space. There is no place for their requested use. A convenience store with gas pumps, a monstrous overhead canopy and lights operated from 5am to 10pm in a residential neighborhood is not needed. Selling beer and cigarettes and creating extra traffic on sidewalks is dangerous to walking school children. The applicants had been told in multiple previous meetings that they needed to reach out to neighbors. The applicants intentionally did not meet with neighbors until after the May 18<sup>th</sup> Planning Board meeting was met with many neighbors reporting being blindsided by this project. A PEMM representative reluctantly met with neighbors for a 30-minute zoom call that abruptly ended when time limit ran out. There was no effort to schedule another meeting or answer any of our questions until we followed up with him a month later. He recorded the meeting and promised us a copy and suddenly can't figure out how to share it. This project*

would be a hardship to the neighborhood. The applicants are not interested in taking care of our neighborhood. They are only interested in taking advantage of it.

**[3] The requested use variance, if granted, will not alter the essential character of the neighborhood and will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, including natural features such as trees; and**

**[Amended 11-14-2001 by L.L. No. 8-2001]**

This is false, the essential character of the neighborhood is at stake.

Environment:

As stated in the November 2017 article (attached) in Environmental Law in New York entitled Development and Redevelopment of Gas Station Properties on page 185, "Yes, you really should perform an ESA Phase II (under SEQR) because it's a gas station!". When the applicants (PEMM) were asked at several meetings about the prior UST (underground storage tanks), they were vague and mostly nonspecific in their response. This was easy information to acquire and the report from the DEC is attached. The DEC has record of their removal in 2017 but because of a gas line and water line running over parts of the tanks, they were crushed in place and the ends of the tanks were left in place to support the underground utilities so they wouldn't be compromised in the backfill process (120 tons of crushed stone). Upon removal of the concrete island where the fuel pumps were there was an obvious gasoline odor present leading to remediation and creation of NYS DEC Spill #1701645.

Potential stormwater hotspots were identified and summarized in the Green Infrastructure Rapid Assessments for Allen Creek Main Branch and Allen Creek East Branch completed by Monroe County in 2013 (attached, Appendix C, page 55). These stormwater hotspots are defined as commercial, municipal, industrial, institutional, or transport-related operations that produce higher levels of stormwater pollutants and may present a higher-than-normal risk for spills, leaks, or illicit discharges. To the extent possible and practical, potential stormwater retrofit projects identified and evaluated in this stormwater assessment are in areas, in part, to help mitigate water quality and stormwater runoff concerns from these areas. Property uses in these areas include trucking, gas stations, auto washing, storage, repair and recyclers, mini-marts, and fast-food restaurants. 3108 East Avenue is on that list.

Physical:

The traffic study submitted at the March 2022 planning board meeting was nothing more than 100+ pages of inaccurate or conflicting data. Synchro 11 is the standard for traffic analysis, yet in the referenced appendices, the program noted is Synchro 8 and the project is from 2018 Long Pond Rd. Apartments The report goes back and forth between real data compiled on one day – January 27 (in the middle of a covid surge and there were over 12,000 reported new cases in Monroe County the 10 days leading up to January 27) and data pulled from various and multiple software and modeling predicting gaps in traffic and forecasting traffic in 2023 post project as not significant. The model assumes the former Gordy's was a land use 945 gas station/convenience store land use showing no increased traffic which is false. Gordy's was a land use 944 gas station/repair shop. The growth factor used was from Penfield at .5 instead of Brighton at 2.0 with no evidence to use the lower number. For existing highway system, table on p.2 of the traffic study, the AADT source for East Avenue traffic was from 2016 before the lanes were reduced so the traffic was overstated when compared to actual traffic on East Avenue in 2022. How is any of this useable data? This report was unnecessarily lengthy and hard to follow the data sources let alone check the math.

The extra lighting from the proposed convenience store, and accompanying monstrosity of a 22 by 44 ft. lit canopy negates any restorative work to the building because it will be blocked by the canopy. The hours of operation will draw traffic, produce excess light and noise and potentially invite crime into the neighborhood with access to alcohol and cigarettes. The site plan you received as part of the application was not the most recent one. The one dated July 22, 2022, states that they might use asphalt roof shingles to replace the building slate roof and accompanying canopy. That is going completely backwards from their consistent promise to keep the slate roof whether repairing or replacing. It also

*shows an oversized Quicklees sign atop the canopy. The site plans have stated all along that there would not be a sign on the canopy. There are also four doors of access to the store. That seems dangerous given the parking and traffic and size of the lot.*

**[4] The alleged hardship has not been self-created.**

As stated in #1 above. This hardship is completely self-created. Mr. Romeo purchased this property in 2018 knowing the property use variance had run out and was zoned BE-1 and was a designated landmark. Mr. Romeo has done nothing to maintain the building and any disrepair has been from neglect of four years. The applicants left out significant information regarding the tank removal and DEC spill reported in 2017 as well as plans for new tanks.

Please think very carefully about what a use variance will do to this neighborhood. A use variance is forever. This project is not in line with the Brighton Comprehensive Plan.

In making your determination whether the proposed project will adversely affect the essential character of the neighborhood or other area in the vicinity of the applicant's property, please consider factors that are of vital importance to the citizens of the Town including without limitation:

- (a) The residential, and historic character and resources of the Town.
- (b) The Town's irreplaceable open space, recreation, and historic sites.
- (c) The extent of hazard to life or property that may result from the proposed project.
- (d) Health impacts.
- (e) The social and economic impacts of traffic, congestion, noise, dust, odors, emissions, solid waste generation, and other nuisances.
- (f) The impact on property values.
- (g) Whether the applicant will use a style of development that may result in degradation to the air quality, water quality, or historic, scenic, and natural resources of the Town.

I thank you for your consideration,

Bridget G. Stone, 1110 Allens Creek Road





JUNE 12, 2017



## TANK CLOSURE REPORT

3108 EAST AVE, ROCHESTER, NY

PREPARED BY: MICHAEL SIMMONS

SUN ENVIRONMENTAL CORP.

4655 CROSSROADS PARK DRIVE, LIVERPOOL, NY 13088

Dick Steamer  
640 Pittsford-Victor LLC  
3108 East Ave.  
Rochester, NY 14618

Dear Mr. Steamer,

On April 24<sup>th</sup>, 2017, 640 Pittsford-Victor LLC entered a contract with Sun Environmental Corp to remove (2) 8,000-gallon fiberglass underground storage tanks previously containing gasoline. The tanks were known to be empty because Pittsford-Victor LLC had previously contracted Sun Environmental Corp to remove all remaining product and dispose of per NYS DEC regulations. Tanks were approximately four inches apart, five feet off the foundation, on the south side of the structure of the building and feed (2) pumps on the western side (front) of the structure.

On Thursday May 18<sup>th</sup>, 2017, the tank removal project was started, after permits were pulled from the Town of Brighton, Dig safe NY was contacted, NYS DEC was notified and the proper equipment was mobilized. The tanks were un-covered utilizing an excavator, during all excavation activities the soil was constantly being screened for petroleum products using a photoionization detector (PID meter). The plumbing was disconnected at that point and a high conveyance vacuum truck was used to remove any remaining product that was in the piping running to the pumping island. The tanks were purged using nitrogen to eliminate any remaining flammable gases, then cut open to do a final rinse. At this point it was discovered that a natural gas line was running over the far corner of the southernmost tank, along with a water supply line running over the northernmost tank. It was mutually decided to crush the tanks in place, and remove them in pieces into a roll-off container to send them off for disposal. The ends of the tanks were left in place to support the underground utilities that were discovered in the excavation process so they wouldn't be compromised during the backfill process. Samples were collected from the walls and the floor of the excavation to be sent off for analytical testing results to confirm that there was no contamination. Due to the fact there were no registered levels on the PID meter during excavation activities, the backfill was ordered, the excavation was then filled using approximately 120 ton of crushed stone. Compaction was completed at one foot lifts to prevent future settling. The project then turned to the fueling island, the pumps were removed and electric power to the island was disconnected. Upon removal of the concrete island there was an obvious gasoline odor present, readings from the PID meter confirmed the presence of petroleum products, DEC was notified, an agent was on-site for this step of the project, and a NYS DEC spill number was issued. (NYS DEC Spill # 1701645)

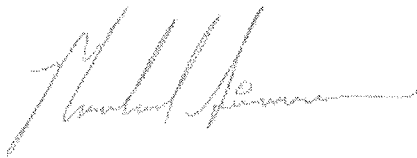
Remediation activities were started immediately. Approximately 1200 pounds of contaminated soil was removed from the excavation and staged on poly sheeting before the crew could dig out of the contaminated soil. The contaminated soil was loaded into 55 gallon drums and sent off to Covanta solutions for disposal. The remainder of the island was then removed, confirmatory samples were then collected and the excavation was backfilled.

During this project, there was no ground water encountered. The tanks were found to be in proper working order with no signs of any other contamination, other than what was referred to above. The depth of the excavation for the tanks was eleven feet deep, and sixteen feet wide. The excavation to remove the fuel island was three and a half feet deep by three feet wide. All associated piping and venting was removed and properly disposed of. The top coat of both excavations was left in crushed stone per client's request.

Thank you for calling on Sun Environmental Corp. and providing this opportunity. Sun has the capabilities to provide outstanding service with the resources to exceed your expectations. Should you have any questions please contact me directly at 585-436-5660.

Sincerely,

***Sun Environmental Corp.***



Michael J. Simmons  
Project Manager

Attached: Disposal manifests, analytical testing



<b>NON-HAZARDOUS WASTE MANIFEST</b>		1. Generator ID Number	2. Page 1 of 1	3. Emergency Response Phone <b>800-807-7455</b>	4. Waste Tracking Number <b>17-0218</b>
5. Generator's Name and Mailing Address <b>640 PITTSFORD-VICTOR LLC 640 PITTSFORD VICTOR RD PITTSFORD NY 14634</b>			Generator's Site Address (if different than mailing address) <b>640 PITTSFORD-VICTOR LLC 3108 EAST AVE ROCHESTER NY 14618</b>		
Generator's Phone: <b>585-248-2021</b>					
6. Transporter 1 Company Name <b>SUN ENVIRONMENTAL CORP. (ROCHESTER)</b>			U.S. EPA ID Number <b>NYR000176958</b>		
7. Transporter 2 Company Name			U.S. EPA ID Number		
8. Designated Facility Name and Site Address <b>INDUSTRIAL OIL TANK SERVICE CORP. 120 DRY RD. ORISKANY NY 13204</b>			U.S. EPA ID Number <b>NYR000005298</b>		
Facility's Phone: <b>315-736-6080</b>					
9. Waste Shipping Name and Description		10. Containers		11. Total Quantity	12. Unit Wt./Vol.
		No.	Type		
1. <b>NON-DOT, NON-RCRA REGULATED SOLIDS SPILL DEBRIS, GASOLINE IMPACTED SOIL</b>		<b>004</b>	<b>DM</b>	<b>1200</b>	<b>P</b>
2.					
3.					
4.					
13. Special Handling Instructions and Additional Information <b>ke11, 1001</b>					
14. GENERATOR'S/OFFEROR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations.					
Generator's/Officer's Printed/Typed Name <b>ON BEHALF OF GENERATOR JOHN HANCOCK</b>		Signature <i>[Signature]</i>		Month <b>5</b>	Day <b>22</b>
15. International Shipments <input type="checkbox"/> Import to U.S. <input type="checkbox"/> Export from U.S.		Port of entry/exit: Date leaving U.S.:		Year <b>17</b>	
16. Transporter Acknowledgment of Receipt of Materials					
Transporter 1 Printed/Typed Name <b>DAN RINKER</b>		Signature <i>[Signature]</i>		Month <b>05</b>	Day <b>22</b>
Transporter 2 Printed/Typed Name		Signature		Month	Day
				Year <b>17</b>	
17. Discrepancy					
17a. Discrepancy Indication Space <input type="checkbox"/> Quantity <input type="checkbox"/> Type <input type="checkbox"/> Residue <input type="checkbox"/> Partial Rejection <input type="checkbox"/> Full Rejection		Manifest Reference Number:			
17b. Alternate Facility (or Generator)		U.S. EPA ID Number			
Facility's Phone:					
17c. Signature of Alternate Facility (or Generator)				Month	Day
				Year	
18. Designated Facility Owner or Operator: Certification of receipt of materials covered by the manifest except as noted in Item 17a					
Printed/Typed Name <b>Michael Rinkers</b>		Signature <i>[Signature]</i>		Month <b>05</b>	Day <b>24</b>
				Year <b>17</b>	



*Analytical Report For*  
**Sun Environmental Corp.**

*For Lab Project ID*

**172211**

*Referencing*

**640 Pittsford-Victor LLC**

*Prepared*

**Tuesday, June 6, 2017**

Any noncompliant QC parameters or other notes impacting data interpretation are flagged or documented on the final report or are noted below.

A handwritten signature in black ink, appearing to read "KR Hansen", is written over a horizontal line.

Certifies that this report has been approved by the Technical Director or Designee

179 Lake Avenue • Rochester, NY 14608 • (585) 647-2530 • Fax (585) 647-3311 • ELAP ID# 10958

This report is part of a multipage document and should only be evaluated in its entirety. The Chain of Custody provides additional sample information, including compliance with the sample condition requirements upon receipt.

*Report Prepared Tuesday, June 6, 2017*



Lab Project ID: 172211

Client: **Sun Environmental Corp.**

Project Reference: 640 Pittsford-Victor LLC

Sample Identifier: Bottom East

Lab Sample ID: 172211-01

Matrix: Soil

Date Sampled: 5/19/2017

Date Received: 5/24/2017

**Semi-Volatile Organics (PAHs)**

Analyte	Result	Units	Qualifier	Date Analyzed
Acenaphthene	< 276	ug/Kg		5/27/2017 05:47
Acenaphthylene	< 276	ug/Kg		5/27/2017 05:47
Anthracene	< 276	ug/Kg		5/27/2017 05:47
Benzo (a) anthracene	< 276	ug/Kg		5/27/2017 05:47
Benzo (a) pyrene	< 276	ug/Kg		5/27/2017 05:47
Benzo (b) fluoranthene	< 276	ug/Kg		5/27/2017 05:47
Benzo (g,h,i) perylene	< 276	ug/Kg		5/27/2017 05:47
Benzo (k) fluoranthene	< 276	ug/Kg		5/27/2017 05:47
Chrysene	< 276	ug/Kg		5/27/2017 05:47
Dibenz (a,h) anthracene	< 276	ug/Kg		5/27/2017 05:47
Fluoranthene	< 276	ug/Kg		5/27/2017 05:47
Fluorene	< 276	ug/Kg		5/27/2017 05:47
Indeno (1,2,3-cd) pyrene	< 276	ug/Kg		5/27/2017 05:47
Naphthalene	< 276	ug/Kg		5/27/2017 05:47
Phenanthrene	< 276	ug/Kg		5/27/2017 05:47
Pyrene	< 276	ug/Kg		5/27/2017 05:47

Surrogate	Percent Recovery	Limits	Outliers	Date Analyzed
2-Fluorobiphenyl	39.7	47.5 - 101	*	5/27/2017 05:47
Nitrobenzene-d5	35.7	44 - 87.8	*	5/27/2017 05:47
Terphenyl-d14	81.8	70.3 - 110		5/27/2017 05:47

Method Reference(s): EPA 8270D  
EPA 3550C  
Preparation Date: 5/26/2017  
Data File: B19835.D

**Volatile Organics (Petroleum)**

Analyte	Result	Units	Qualifier	Date Analyzed
1,2,4-Trimethylbenzene	< 5.70	ug/Kg		6/1/2017 17:19
1,3,5-Trimethylbenzene	< 5.70	ug/Kg		6/1/2017 17:19
Benzene	< 5.70	ug/Kg		6/1/2017 17:19

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Lab Project ID: 172211

Client: **Sun Environmental Corp.**

Project Reference: 640 Pittsford-Victor LLC

Sample Identifier:	Bottom East				
Lab Sample ID:	172211-01		Date Sampled:	5/19/2017	
Matrix:	Soil		Date Received:	5/24/2017	
<hr/>					
Ethylbenzene	< 5.70	ug/Kg		6/1/2017	17:19
Isopropylbenzene	< 5.70	ug/Kg		6/1/2017	17:19
m,p-Xylene	< 5.70	ug/Kg		6/1/2017	17:19
Methyl tert-butyl Ether	< 5.70	ug/Kg		6/1/2017	17:19
Naphthalene	< 14.3	ug/Kg		6/1/2017	17:19
n-Butylbenzene	< 5.70	ug/Kg		6/1/2017	17:19
n-Propylbenzene	< 5.70	ug/Kg		6/1/2017	17:19
o-Xylene	< 5.70	ug/Kg		6/1/2017	17:19
p-Isopropyltoluene	< 5.70	ug/Kg		6/1/2017	17:19
sec-Butylbenzene	< 5.70	ug/Kg		6/1/2017	17:19
tert-Butylbenzene	< 5.70	ug/Kg		6/1/2017	17:19
Toluene	< 5.70	ug/Kg		6/1/2017	17:19
Surrogate	Percent Recovery	Limits	Outliers	Date Analyzed	
1,2-Dichloroethane-d4	130	83.8 - 121	*	6/1/2017	17:19
4-Bromofluorobenzene	84.2	85.1 - 111	*	6/1/2017	17:19
Pentafluorobenzene	97.4	91.1 - 110		6/1/2017	17:19
Toluene-D8	84.2	92.4 - 107	*	6/1/2017	17:19

**Method Reference(s):** EPA 8260C  
EPA 5035A - L  
**Data File:** x42027.D

*This sample was not collected following SW846 5035A specifications. Accordingly, any Volatiles soil results that are less than 200 ug/Kg, including Non Detects, may be biased low, per ELAP method 5035 guidance document from 11/15/2012.*





Lab Project ID: 172211

Client: **Sun Environmental Corp.**

Project Reference: 640 Pittsford-Victor LLC

Sample Identifier: Bottom West

Lab Sample ID: 172211-02

Date Sampled: 5/19/2017

Matrix: Soil

Date Received: 5/24/2017

**Semi-Volatile Organics (PAHs)**

Analyte	Result	Units	Qualifier	Date Analyzed
Acenaphthene	< 292	ug/Kg		5/27/2017 06:16
Acenaphthylene	< 292	ug/Kg		5/27/2017 06:16
Anthracene	< 292	ug/Kg		5/27/2017 06:16
Benzo (a) anthracene	< 292	ug/Kg		5/27/2017 06:16
Benzo (a) pyrene	< 292	ug/Kg		5/27/2017 06:16
Benzo (b) fluoranthene	< 292	ug/Kg		5/27/2017 06:16
Benzo (g,h,i) perylene	< 292	ug/Kg		5/27/2017 06:16
Benzo (k) fluoranthene	< 292	ug/Kg		5/27/2017 06:16
Chrysene	< 292	ug/Kg		5/27/2017 06:16
Dibenz (a,h) anthracene	< 292	ug/Kg		5/27/2017 06:16
Fluoranthene	< 292	ug/Kg		5/27/2017 06:16
Fluorene	< 292	ug/Kg		5/27/2017 06:16
Indeno (1,2,3-cd) pyrene	< 292	ug/Kg		5/27/2017 06:16
Naphthalene	< 292	ug/Kg		5/27/2017 06:16
Phenanthrene	< 292	ug/Kg		5/27/2017 06:16
Pyrene	< 292	ug/Kg		5/27/2017 06:16

Surrogate	Percent Recovery	Limits	Outliers	Date Analyzed
2-Fluorobiphenyl	39.9	47.5 - 101	*	5/27/2017 06:16
Nitrobenzene-d5	36.9	44 - 87.8	*	5/27/2017 06:16
Terphenyl-d14	73.1	70.3 - 110		5/27/2017 06:16

Method Reference(s): EPA 8270D  
EPA 3550C  
Preparation Date: 5/26/2017  
Data File: B19836.D

**Volatile Organics (Petroleum)**

Analyte	Result	Units	Qualifier	Date Analyzed
1,2,4-Trimethylbenzene	< 5.82	ug/Kg		6/1/2017 17:43
1,3,5-Trimethylbenzene	< 5.82	ug/Kg		6/1/2017 17:43
Benzene	< 5.82	ug/Kg		6/1/2017 17:43

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Report Prepared Tuesday, June 6, 2017



Lab Project ID: 172211

Client: **Sun Environmental Corp.**

Project Reference: 640 Pittsford-Victor LLC

<b>Sample Identifier:</b>	Bottom West			<b>Date Sampled:</b>	5/19/2017
<b>Lab Sample ID:</b>	172211-02			<b>Date Received:</b>	5/24/2017
<b>Matrix:</b>	Soil				
Ethylbenzene	< 5.82	ug/Kg		6/1/2017	17:43
Isopropylbenzene	< 5.82	ug/Kg		6/1/2017	17:43
m,p-Xylene	< 5.82	ug/Kg		6/1/2017	17:43
Methyl tert-butyl Ether	< 5.82	ug/Kg		6/1/2017	17:43
Naphthalene	< 14.6	ug/Kg		6/1/2017	17:43
n-Butylbenzene	< 5.82	ug/Kg		6/1/2017	17:43
n-Propylbenzene	< 5.82	ug/Kg		6/1/2017	17:43
o-Xylene	< 5.82	ug/Kg		6/1/2017	17:43
p-Isopropyltoluene	< 5.82	ug/Kg		6/1/2017	17:43
sec-Butylbenzene	< 5.82	ug/Kg		6/1/2017	17:43
tert-Butylbenzene	< 5.82	ug/Kg		6/1/2017	17:43
Toluene	< 5.82	ug/Kg		6/1/2017	17:43
<b>Surrogate</b>	<b>Percent Recovery</b>	<b>Limits</b>	<b>Outliers</b>	<b>Date Analyzed</b>	
1,2-Dichloroethane-d4	130	83.8 - 121	*	6/1/2017	17:43
4-Bromofluorobenzene	81.8	85.1 - 111	*	6/1/2017	17:43
Pentafluorobenzene	98.5	91.1 - 110		6/1/2017	17:43
Toluene-D8	81.0	92.4 - 107	*	6/1/2017	17:43

**Method Reference(s):** EPA 8260C  
EPA 5035A - L  
**Data File:** x42028.D

*This sample was not collected following SW846 5035A specifications. Accordingly, any Volatiles soil results that are less than 200 ug/Kg, including Non Detects, may be biased low, per ELAP method 5035 guidance document from 11/15/2012.*



Lab Project ID: 172211

Client: **Sun Environmental Corp.**

Project Reference: 640 Pittsford-Victor LLC

Sample Identifier: Wall West

Lab Sample ID: 172211-03

Date Sampled: 5/19/2017

Matrix: Soil

Date Received: 5/24/2017

**Semi-Volatile Organics (PAHs)**

Analyte	Result	Units	Qualifier	Date Analyzed
Acenaphthene	< 288	ug/Kg		5/27/2017 06:45
Acenaphthylene	< 288	ug/Kg		5/27/2017 06:45
Anthracene	< 288	ug/Kg		5/27/2017 06:45
Benzo (a) anthracene	< 288	ug/Kg		5/27/2017 06:45
Benzo (a) pyrene	< 288	ug/Kg		5/27/2017 06:45
Benzo (b) fluoranthene	< 288	ug/Kg		5/27/2017 06:45
Benzo (g,h,i) perylene	< 288	ug/Kg		5/27/2017 06:45
Benzo (k) fluoranthene	< 288	ug/Kg		5/27/2017 06:45
Chrysene	< 288	ug/Kg		5/27/2017 06:45
Dibenz (a,h) anthracene	< 288	ug/Kg		5/27/2017 06:45
Fluoranthene	< 288	ug/Kg		5/27/2017 06:45
Fluorene	< 288	ug/Kg		5/27/2017 06:45
Indeno (1,2,3-cd) pyrene	< 288	ug/Kg		5/27/2017 06:45
Naphthalene	< 288	ug/Kg		5/27/2017 06:45
Phenanthrene	< 288	ug/Kg		5/27/2017 06:45
Pyrene	< 288	ug/Kg		5/27/2017 06:45

Surrogate	Percent Recovery	Limits	Outliers	Date Analyzed
2-Fluorobiphenyl	47.6	47.5 - 101		5/27/2017 06:45
Nitrobenzene-d5	43.3	44 - 87.8	*	5/27/2017 06:45
Terphenyl-d14	87.1	70.3 - 110		5/27/2017 06:45

Method Reference(s): EPA 8270D  
EPA 3550C  
Preparation Date: 5/26/2017  
Data File: B19837.D

**Volatile Organics (Petroleum)**

Analyte	Result	Units	Qualifier	Date Analyzed
1,2,4-Trimethylbenzene	< 7.46	ug/Kg		6/1/2017 18:07
1,3,5-Trimethylbenzene	< 7.46	ug/Kg		6/1/2017 18:07
Benzene	< 7.46	ug/Kg		6/1/2017 18:07

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Report Prepared Tuesday, June 6, 2017



**Lab Project ID:** 172211

**Client:** Sun Environmental Corp.

**Project Reference:** 640 Pittsford-Victor LLC

**Sample Identifier:** Wall West

**Lab Sample ID:** 172211-03

**Date Sampled:** 5/19/2017

**Matrix:** Soil

**Date Received:** 5/24/2017

Ethylbenzene	< 7.46	ug/Kg	6/1/2017 18:07
Isopropylbenzene	< 7.46	ug/Kg	6/1/2017 18:07
m,p-Xylene	< 7.46	ug/Kg	6/1/2017 18:07
Methyl tert-butyl Ether	< 7.46	ug/Kg	6/1/2017 18:07
Naphthalene	< 18.7	ug/Kg	6/1/2017 18:07
n-Butylbenzene	< 7.46	ug/Kg	6/1/2017 18:07
n-Propylbenzene	< 7.46	ug/Kg	6/1/2017 18:07
o-Xylene	< 7.46	ug/Kg	6/1/2017 18:07
p-Isopropyltoluene	< 7.46	ug/Kg	6/1/2017 18:07
sec-Butylbenzene	< 7.46	ug/Kg	6/1/2017 18:07
tert-Butylbenzene	< 7.46	ug/Kg	6/1/2017 18:07
Toluene	< 7.46	ug/Kg	6/1/2017 18:07

<b>Surrogate</b>	<b>Percent Recovery</b>	<b>Limits</b>	<b>Outliers</b>	<b>Date Analyzed</b>
1,2-Dichloroethane-d4	131	83.8 - 121	*	6/1/2017 18:07
4-Bromofluorobenzene	83.1	85.1 - 111	*	6/1/2017 18:07
Pentafluorobenzene	96.3	91.1 - 110		6/1/2017 18:07
Toluene-D8	92.0	92.4 - 107	*	6/1/2017 18:07

**Method Reference(s):** EPA 8260C  
EPA 5035A - L  
**Data File:** x42029.D

*This sample was not collected following SW846 5035A specifications. Accordingly, any Volatiles soil results that are less than 200 ug/Kg, including Non Detects, may be biased low, per ELAP method 5035 guidance document from 11/15/2012.*



Lab Project ID: 172211

Client: **Sun Environmental Corp.**

Project Reference: 640 Pittsford-Victor LLC

Sample Identifier: Wall East

Lab Sample ID: 172211-04

Date Sampled: 5/19/2017

Matrix: Soil

Date Received: 5/24/2017

**Semi-Volatile Organics (PAHs)**

Analyte	Result	Units	Qualifier	Date Analyzed
Acenaphthene	< 308	ug/Kg		5/27/2017 07:15
Acenaphthylene	< 308	ug/Kg		5/27/2017 07:15
Anthracene	< 308	ug/Kg		5/27/2017 07:15
Benzo (a) anthracene	358	ug/Kg		5/27/2017 07:15
Benzo (a) pyrene	423	ug/Kg		5/27/2017 07:15
Benzo (b) fluoranthene	451	ug/Kg		5/27/2017 07:15
Benzo (g,h,i) perylene	367	ug/Kg		5/27/2017 07:15
Benzo (k) fluoranthene	375	ug/Kg		5/27/2017 07:15
Chrysene	458	ug/Kg		5/27/2017 07:15
Dibenz (a,h) anthracene	< 308	ug/Kg		5/27/2017 07:15
Fluoranthene	806	ug/Kg		5/27/2017 07:15
Fluorene	< 308	ug/Kg		5/27/2017 07:15
Indeno (1,2,3-cd) pyrene	405	ug/Kg		5/27/2017 07:15
Naphthalene	< 308	ug/Kg		5/27/2017 07:15
Phenanthrene	< 308	ug/Kg		5/27/2017 07:15
Pyrene	633	ug/Kg		5/27/2017 07:15

Surrogate	Percent Recovery	Limits	Outliers	Date Analyzed
2-Fluorobiphenyl	80.3	47.5 - 101		5/27/2017 07:15
Nitrobenzene-d5	72.9	44 - 87.8		5/27/2017 07:15
Terphenyl-d14	89.0	70.3 - 110		5/27/2017 07:15

Method Reference(s): EPA 8270D  
EPA 3550C  
Preparation Date: 5/26/2017  
Data File: B19838.D

**Volatile Organics (Petroleum)**

Analyte	Result	Units	Qualifier	Date Analyzed
1,2,4-Trimethylbenzene	< 8.66	ug/Kg		6/1/2017 18:32
1,3,5-Trimethylbenzene	< 8.66	ug/Kg		6/1/2017 18:32
Benzene	< 8.66	ug/Kg		6/1/2017 18:32

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Report Prepared Tuesday, June 6, 2017





**Lab Project ID:** 172211

**Client:** Sun Environmental Corp.

**Project Reference:** 640 Pittsford-Victor LLC

<b>Sample Identifier:</b>	Wall East			<b>Date Sampled:</b>	5/19/2017
<b>Lab Sample ID:</b>	172211-04			<b>Date Received:</b>	5/24/2017
<b>Matrix:</b>	Soil				
Ethylbenzene	< 8.66	ug/Kg		6/1/2017	18:32
Isopropylbenzene	< 8.66	ug/Kg		6/1/2017	18:32
m,p-Xylene	< 8.66	ug/Kg		6/1/2017	18:32
Methyl tert-butyl Ether	< 8.66	ug/Kg		6/1/2017	18:32
Naphthalene	< 21.7	ug/Kg		6/1/2017	18:32
n-Butylbenzene	< 8.66	ug/Kg		6/1/2017	18:32
n-Propylbenzene	< 8.66	ug/Kg		6/1/2017	18:32
o-Xylene	< 8.66	ug/Kg		6/1/2017	18:32
p-Isopropyltoluene	< 8.66	ug/Kg		6/1/2017	18:32
sec-Butylbenzene	< 8.66	ug/Kg		6/1/2017	18:32
tert-Butylbenzene	< 8.66	ug/Kg		6/1/2017	18:32
Toluene	< 8.66	ug/Kg		6/1/2017	18:32
<b>Surrogate</b>	<b>Percent Recovery</b>	<b>Limits</b>	<b>Outliers</b>	<b>Date Analyzed</b>	
1,2-Dichloroethane-d4	133	83.8 - 121	*	6/1/2017	18:32
4-Bromofluorobenzene	81.4	85.1 - 111	*	6/1/2017	18:32
Pentafluorobenzene	97.8	91.1 - 110		6/1/2017	18:32
Toluene-D8	85.7	92.4 - 107	*	6/1/2017	18:32

**Method Reference(s):** EPA 8260C  
EPA 5035A - I.  
**Data File:** x42030.D

*This sample was not collected following SW846 5035A specifications. Accordingly, any Volatiles soil results that are less than 200 ug/Kg, including Non Detects, may be biased low, per ELAP method 5035 guidance document from 11/15/2012.*



Client: **Sun Environmental Corp.**

Project Reference: 640 Pittsford-Victor LLC

Sample Identifier: Island West

Lab Sample ID: 172211-05

Matrix: Soil

Date Sampled: 5/19/2017

Date Received: 5/24/2017

**Semi-Volatile Organics (PAHs)**

Analyte	Result	Units	Qualifier	Date Analyzed
Acenaphthene	< 306	ug/Kg		5/27/2017 07:44
Acenaphthylene	< 306	ug/Kg		5/27/2017 07:44
Anthracene	< 306	ug/Kg		5/27/2017 07:44
Benzo (a) anthracene	456	ug/Kg		5/27/2017 07:44
Benzo (a) pyrene	509	ug/Kg		5/27/2017 07:44
Benzo (b) fluoranthene	556	ug/Kg		5/27/2017 07:44
Benzo (g,h,i) perylene	458	ug/Kg		5/27/2017 07:44
Benzo (k) fluoranthene	469	ug/Kg		5/27/2017 07:44
Chrysene	593	ug/Kg		5/27/2017 07:44
Dibenz (a,h) anthracene	< 306	ug/Kg		5/27/2017 07:44
Fluoranthene	1030	ug/Kg		5/27/2017 07:44
Fluorene	< 306	ug/Kg		5/27/2017 07:44
Indeno (1,2,3-cd) pyrene	460	ug/Kg		5/27/2017 07:44
Naphthalene	< 306	ug/Kg		5/27/2017 07:44
Phenanthrene	350	ug/Kg		5/27/2017 07:44
Pyrene	785	ug/Kg		5/27/2017 07:44

Surrogate	Percent Recovery	Limits	Outliers	Date Analyzed
2-Fluorobiphenyl	65.5	47.5 - 101		5/27/2017 07:44
Nitrobenzene-d5	57.0	44 - 87.8		5/27/2017 07:44
Terphenyl-d14	68.6	70.3 - 110	*	5/27/2017 07:44

Method Reference(s): EPA 8270D  
EPA 3550C  
Preparation Date: 5/26/2017  
Data File: B19839.D

**Volatile Organics (Petroleum)**

Analyte	Result	Units	Qualifier	Date Analyzed
1,2,4-Trimethylbenzene	< 6.03	ug/Kg		6/1/2017 18:56
1,3,5-Trimethylbenzene	< 6.03	ug/Kg		6/1/2017 18:56
Benzene	< 6.03	ug/Kg		6/1/2017 18:56

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**Lab Project ID:** 172211

**Client:** Sun Environmental Corp.

**Project Reference:** 640 Pittsford-Victor LLC

Sample Identifier:	Island West				
Lab Sample ID:	172211-05		Date Sampled:	5/19/2017	
Matrix:	Soil		Date Received:	5/24/2017	
Ethylbenzene	< 6.03	ug/Kg		6/1/2017	18:56
Isopropylbenzene	< 6.03	ug/Kg		6/1/2017	18:56
m,p-Xylene	< 6.03	ug/Kg		6/1/2017	18:56
Methyl tert-butyl Ether	< 6.03	ug/Kg		6/1/2017	18:56
Naphthalene	< 15.1	ug/Kg		6/1/2017	18:56
n-Butylbenzene	< 6.03	ug/Kg		6/1/2017	18:56
n-Propylbenzene	< 6.03	ug/Kg		6/1/2017	18:56
o-Xylene	< 6.03	ug/Kg		6/1/2017	18:56
p-Isopropyltoluene	< 6.03	ug/Kg		6/1/2017	18:56
sec-Butylbenzene	< 6.03	ug/Kg		6/1/2017	18:56
tert-Butylbenzene	< 6.03	ug/Kg		6/1/2017	18:56
Toluene	< 6.03	ug/Kg		6/1/2017	18:56
Surrogate	Percent Recovery	Limits	Outliers	Date Analyzed	
1,2-Dichloroethane-d4	136	83.8 - 121	*	6/1/2017	18:56
4-Bromofluorobenzene	75.7	85.1 - 111	*	6/1/2017	18:56
Pentafluorobenzene	94.6	91.1 - 110		6/1/2017	18:56
Toluene-D8	88.6	92.4 - 107	*	6/1/2017	18:56

**Method Reference(s):** EPA 8260C  
EPA 5035A - L  
**Data File:** x42031.D

*This sample was not collected following SW846 5035A specifications. Accordingly, any Volatiles soil results that are less than 200 ug/Kg, including Non Detects, may be biased low, per ELAP method 5035 guidance document from 11/15/2012.*



Lab Project ID: 172211

Client: **Sun Environmental Corp.**

Project Reference: 640 Pittsford-Victor LLC

Sample Identifier: Island East

Lab Sample ID: 172211-06

Date Sampled: 5/19/2017

Matrix: Soil

Date Received: 5/24/2017

**Semi-Volatile Organics (PAHs)**

Analyte	Result	Units	Qualifier	Date Analyzed
Acenaphthene	624	ug/Kg		5/27/2017 08:13
Acenaphthylene	< 311	ug/Kg		5/27/2017 08:13
Anthracene	1120	ug/Kg		5/27/2017 08:13
Benzo (a) anthracene	2390	ug/Kg		5/27/2017 08:13
Benzo (a) pyrene	2000	ug/Kg		5/27/2017 08:13
Benzo (b) fluoranthene	2150	ug/Kg		5/27/2017 08:13
Benzo (g,h,i) perylene	1260	ug/Kg		5/27/2017 08:13
Benzo (k) fluoranthene	1430	ug/Kg		5/27/2017 08:13
Chrysene	2330	ug/Kg		5/27/2017 08:13
Dibenz (a,h) anthracene	463	ug/Kg		5/27/2017 08:13
Fluoranthene	5030	ug/Kg		5/27/2017 08:13
Fluorene	467	ug/Kg		5/27/2017 08:13
Indeno (1,2,3-cd) pyrene	1420	ug/Kg		5/27/2017 08:13
Naphthalene	< 311	ug/Kg		5/27/2017 08:13
Phenanthrene	4090	ug/Kg		5/27/2017 08:13
Pyrene	3990	ug/Kg		5/27/2017 08:13

Surrogate	Percent Recovery	Limits	Outliers	Date Analyzed
2-Fluorobiphenyl	74.8	47.5 - 101		5/27/2017 08:13
Nitrobenzene-d5	65.1	44 - 87.8		5/27/2017 08:13
Terphenyl-d14	85.5	70.3 - 110		5/27/2017 08:13

Method Reference(s): EPA 8270D  
EPA 3550C  
Preparation Date: 5/26/2017  
Data File: B19840.D

**Volatile Organics (Petroleum)**

Analyte	Result	Units	Qualifier	Date Analyzed
1,2,4-Trimethylbenzene	< 6.46	ug/Kg		6/1/2017 19:20
1,3,5-Trimethylbenzene	< 6.46	ug/Kg		6/1/2017 19:20
Benzene	< 6.46	ug/Kg		6/1/2017 19:20

This report is part of a multipage document and should only be evaluated in its entirety. The Chain of Custody provides additional sample information, including compliance with the sample condition requirements upon receipt.

Report Prepared Tuesday, June 6, 2017



**Lab Project ID:** 172211

**Client:** Sun Environmental Corp.

**Project Reference:** 640 Pittsford-Victor LLC

<b>Sample Identifier:</b>	Island East			<b>Date Sampled:</b>	5/19/2017
<b>Lab Sample ID:</b>	172211-06			<b>Date Received:</b>	5/24/2017
<b>Matrix:</b>	Soil				
Ethylbenzene	< 6.46	ug/Kg		6/1/2017	19:20
Isopropylbenzene	< 6.46	ug/Kg		6/1/2017	19:20
m,p-Xylene	< 6.46	ug/Kg		6/1/2017	19:20
Methyl tert-butyl Ether	< 6.46	ug/Kg		6/1/2017	19:20
Naphthalene	< 16.1	ug/Kg		6/1/2017	19:20
n-Butylbenzene	< 6.46	ug/Kg		6/1/2017	19:20
n-Propylbenzene	< 6.46	ug/Kg		6/1/2017	19:20
o-Xylene	< 6.46	ug/Kg		6/1/2017	19:20
p-Isopropyltoluene	< 6.46	ug/Kg		6/1/2017	19:20
sec-Butylbenzene	< 6.46	ug/Kg		6/1/2017	19:20
tert-Butylbenzene	< 6.46	ug/Kg		6/1/2017	19:20
Toluene	< 6.46	ug/Kg		6/1/2017	19:20
<b>Surrogate</b>	<b>Percent Recovery</b>	<b>Limits</b>	<b>Outliers</b>	<b>Date Analyzed</b>	
1,2-Dichloroethane-d4	134	83.8 - 121	*	6/1/2017	19:20
4-Bromofluorobenzene	79.3	85.1 - 111	*	6/1/2017	19:20
Pentafluorobenzene	93.5	91.1 - 110		6/1/2017	19:20
Toluene-D8	91.2	92.4 - 107	*	6/1/2017	19:20

**Method Reference(s):** EPA 8260C  
EPA 5035A - L

**Data File:** x42032.D

*This sample was not collected following SW846 5035A specifications. Accordingly, any Volatiles soil results that are less than 200 ug/Kg, including Non Detects, may be biased low, per ELAP method 5035 guidance document from 11/15/2012.*





## Analytical Report Appendix

The reported results relate only to the samples as they have been received by the laboratory.

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All soil/sludge samples have been reported on a dry weight basis, unless qualified "reported as received". Other solids are reported as received.

Low level Volatiles blank reports for soil/solid matrix are based on a nominal 5 gram weight. Sample results and reporting limits are based on actual weight, which may be more or less than 5 grams.

The Chain of Custody provides additional information, including compliance with sample condition requirements upon receipt. Sample condition requirements are defined under the 2003 NELAC Standard, sections 5.5.8.3.1 and 5.5.8.3.2.

NYSDOH ELAP does not certify for all parameters. Paradigm Environmental Services or the indicated subcontracted laboratory does hold certification for all analytes where certification is offered by ELAP unless otherwise specified. Aliquots separated for certain tests, such as TCLP, are indicated on the Chain of Custody and final reports with an "A" suffix.

Data qualifiers are used, when necessary, to provide additional information about the data. This information may be communicated as a flag or as text at the bottom of the report. Please refer to the following list of analyte-specific, frequently used data flags and their meaning:

*"<" = Analyzed for but not detected at or above the quantitation limit.*

*"E" = Result has been estimated, calibration limit exceeded.*

*"Z" = See case narrative.*

*"D" = Sample, Laboratory Control Sample, or Matrix Spike Duplicate results above Relative Percent Difference limit.*

*"M" = Matrix spike recoveries outside QC limits. Matrix bias indicated.*

*"B" = Method blank contained trace levels of analyte. Refer to included method blank report.*

*"J" = Result estimated between the quantitation limit and half the quantitation limit.*

*"L" = Laboratory Control Sample recovery outside accepted QC limits.*

*"P" = Concentration differs by more than 40% between the primary and secondary analytical columns.*

*"NC" = Not calculable. Applicable to RPD if sample or duplicate result is non-detect or estimated (see primary report for data flags). Applicable to MS if sample is greater or equal to ten times the spike added. Applicable to sample surrogates or MS if sample dilution is 10x or higher.*

*"\*" = Indicates any recoveries outside associated acceptance windows. Surrogate outliers in samples are presumed matrix effects. LCS demonstrates method compliance unless otherwise noted.*

*"(1)" = Indicates data from primary column used for QC calculation.*

*"A" = denotes a parameter for which ELAP does not offer approval as part of their laboratory certification program.*

*"F" = denotes a parameter for which Paradigm does not carry certification, the results for which should therefore only be used where ELAP certification is not required, such as personal exposure assessment.*

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# GENERAL TERMS AND CONDITIONS

## LABORATORY SERVICES

These Terms and Conditions embody the whole agreement of the parties in the absence of a signed and executed contract between the Laboratory (LAB) and Client. They shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties. The LAB specifically rejects all additional, inconsistent, or conflicting terms, whether printed or otherwise set forth in any purchase order or other communication from the Client to the LAB. The invalidity or unenforceability in whole or in part of any provision, term or condition hereof shall not affect in any way the validity or enforceability of the remainder of the Terms and Conditions. No waiver by LAB of any provision, term, or condition hereof or of any breach by or obligation of the Client hereunder shall constitute a waiver of such provision, term, or condition on any other occasion or a waiver of any other breach by or obligation of the Client. This agreement shall be administered and interpreted under the laws of the state which services are procured.

<b>Warranty.</b>	Recognizing that the nature of many samples is unknown and that some may contain potentially hazardous components, LAB warrants only that it will perform testing services, obtain findings, and prepare reports in accordance with generally accepted analytical laboratory principles and practices at the time of performance of services. LAB makes no other warranty, express or implied.
<b>Scope and Compensation.</b>	LAB agrees to perform the services described in the chain of custody to which these terms and conditions are attached. Unless the parties agree in writing to the contrary, the duties of LAB shall not be construed to exceed the services specifically described. LAB will use LAB default method for all tests unless specified otherwise on the Work Order. Payment terms are net 30 days from the date of invoice. All overdue payments are subject to an interest charge of one and one-half percent (1-1/2%) per month or a portion thereof. Client shall also be responsible for costs of collection, including payment of reasonable attorney fees if such expense is incurred. The prices, unless stated, do not include any sale, use or other taxes. Such taxes will be added to invoice prices when required.
<b>Prices.</b>	Compensation for services performed will be based on the current Lab Analytical Fee Schedule or on quotations agreed to in writing by the parties. Turnaround time based charges are determined from the time of resolution of all work order questions. Testimony, court appearances or data compilation for legal action will be charged separately. Evaluation and reporting of initial screening runs may incur additional fees.
<b>Limitations of Liability.</b>	In the event of any error, omission, or other professional negligence, the sole and exclusive responsibility of LAB shall be to re-perform the deficient work at its own expense and LAB shall have no other liability whatsoever. All claims shall be deemed waived unless made in writing and received by LAB within ninety (90) days following completion of services. LAB shall have no liability, obligation, or responsibility of any kind for losses, costs, expenses, or other damages (including but not limited to any special, direct, incidental or consequential damages) with respect to LAB's services or results. All results provided by LAB are strictly for the use of its clients and LAB is in no way responsible for the use of such results by clients or third parties. All reports should be considered in their entirety, and LAB is not responsible for the separation, detachment, or other use of any portion of these reports. Client may not assign the lab report without the written consent of the LAB. Client covenants and agrees, at its/his/her sole expense, to indemnify, protect, defend, and save harmless the LAB from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation attorneys' and experts' fees and disbursements) of any kind whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against client relating to, resulting from or arising out of (a) the breach of this agreement by this client, (b) the negligence of the client in handling, delivering or disclosing any hazardous substance, (c) the violation of the Client of any applicable law, (d) non-compliance by the Client with any environmental permit or (e) a material misrepresentation in disclosing the materials to be tested.
<b>Hazard Disclosure.</b>	Client represents and warrants that any sample delivered to LAB will be preceded or accompanied by complete written disclosure of the presence of any hazardous substances known or suspected by Client. Client further warrants that any sample containing any hazardous substance that is to be delivered to LAB will be packaged, labeled, transported, and delivered properly and in accordance with applicable laws.
<b>Sample Handling.</b>	Prior to LAB's acceptance of any sample (or after any revocation of acceptance), the entire risk of loss or of damage to such sample remains with Client. Samples are accepted when receipt is acknowledged on chain of custody documentation. In no event will LAB have any responsibility for the action or inaction of any carrier shipping or delivering any sample to or from LAB premises. Client authorizes LAB to proceed with the analysis of samples as received by the laboratory, recognizing that any samples not in compliance with all current DOH-ELAP-NELAP requirements for containers, preservation or holding time will be noted as such on the final report. Disposal of hazardous waste samples is the responsibility of the Client. If the Client does not wish such samples returned, LAB may add storage and disposal fees to the final invoice. Maximum storage time for samples is 30 days after completion of analysis unless modified by applicable state or federal laws. Client will be required to give the LAB written instructions concerning disposal of these samples. LAB reserves the absolute right, exercisable at any time, to refuse to receive delivery of, refuse to accept, or revoke acceptance of any sample, which, in the sole judgment of LAB (a) is of unsuitable volume, (b) may be or become unsuitable for or may pose a risk in handling, transport, or processing for any health, safety, environmental or other reason whether or not due to the presence in the sample of any hazardous substance, and whether or not such presence has been disclosed to LAB by Client or (c) if the condition or sample date make the sample unsuitable for analysis.
<b>Legal Responsibility.</b>	LAB is solely responsible for performance of this contract, and no affiliated company, director, officer, employee, or agent shall have any legal responsibility hereunder, whether in contract or tort including negligence.
<b>Assignment.</b>	LAB may assign its performance obligations under this contract to other parties, as it deems necessary. LAB shall disclose to Client any assignee (subcontractor) by ELAP ID # on the submitted final report.
<b>Force Majeure.</b>	LAB shall have no responsibility or liability to the Client for any failure or delay in performance by LAB, which results in whole or in part from any cause or circumstance beyond the reasonable control of LAB. Such causes and circumstances shall include, but not limited to, acts of God, acts or orders of any government authority, strikes or other labor disputes, natural disasters, accidents, wars, civil disturbances, difficulties or delays in transportation, mail or delivery services, inability to obtain sufficient services or supplies from LAB's usual suppliers, or any other cause beyond LAB's reasonable control.
<b>Law.</b>	This contract shall be continued under the laws of the State of New York without regard to its conflicts of laws provision.

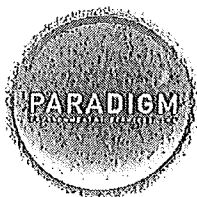
This report is part of a multipage document and should only be evaluated in its entirety. The Chain of Custody provides additional sample information, including compliance with the sample condition requirements upon receipt.

## CHAIN OF CUSTODY RECORD

16 of 16

5/24/17 14:29

2062



# Chain of Custody Supplement

Client: Sum  
 Lab Project ID: 172211

Completed by: Mollyvail  
 Date: 5/24/17

## **Sample Condition Requirements** Per NELAC/ELAP 210/241/242/243/244

Condition	NELAC compliance with the sample condition requirements upon receipt		
	Yes	No	N/A
Container Type	<input checked="" type="checkbox"/>	<input type="checkbox"/> 5035	<input type="checkbox"/>
Comments			
Transferred to method-compliant container	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Headspace (<1 mL)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments			
Preservation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments			
Chlorine Absent (<0.10 ppm per test strip)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments			
Holding Time	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments			
Temperature	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments	4°C cool 5/24/17 1424		
Sufficient Sample Quantity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments			

Developments in Federal  
and State Law

Michael B. Gerrard  
Editor

ENVIRONMENTAL  
LAW IN  
NEW YORK

ARNOLD & PORTER KAYE SCHOLER LLP

  
LexisNexis™

Volume 28, No. 11

November 2017

# Development and Redevelopment of Gas Station Properties

Seth D. Friedland & Reesa D. Hedrick

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*The high opportunity cost of maintaining gas stations, in the face of rising real estate values and increased environmental and other regulatory compliance costs, has decreased the number of gas stations across the country. Over the last ten-plus years, oil companies have divested most of their retail gas station properties both for continued petroleum uses and for non-petroleum uses. These circumstances have presented opportunities for gas station property owners, developers, investors, purchasers, petroleum marketers, and attorneys, but also challenges. In the divestment process, oil companies customarily impose various requirements, use restrictions, covenants, and obligations on buyers of gas stations. Additionally, gas stations often present environmental issues and conditions that can complicate development. Appropriate due diligence is essential to avoid the*

*potential pitfalls of such restrictions, requirements, and environmental risks. However, if sufficient preparation, time, and thought are given to the due diligence process, gas stations make attractive development sites.*

## Introduction

Gas stations are highly valued development sites because they are spacious slabs of concrete and asphalt, typically located at key intersections with great visibility and easy access. Due to their attractiveness, buyers, investors, developers, and owners are constantly exploring new and creative alternative uses for gas stations. Moreover, relevant changes in the economy, governmental policy, and petroleum industry custom over the past several years have contributed to a growing trend in the conversion and redevelopment of gas station and service station sites into alternative uses. In most areas of the country, not only have real estate values skyrocketed, the costs of operating and maintaining gas stations and repair shops have also increased. This is in part due to pervasive local, state, and federal regulations, particularly environmental regulations, which require costly compliance programs. In addition, over the last couple of decades, there has been a significant consolidation in the oil industry due to mergers and acquisitions. In conjunction with these changes, industry participants have recognized that a gas station or a service station with a repair shop is rarely the highest and best use of valuable real estate. Consequently, not only have the oil companies sold off their gas stations to strengthen their balance sheets, but the number of operating gas stations in the



U.S. has steadily declined<sup>1</sup> and many gas stations have been redeveloped and converted to other uses. It may seem obvious that when purchasing or developing any type of asset, you must perform a certain amount of due diligence, but when working a deal to develop or redevelop a gas station or service station property, due diligence is paramount. The devil is in the details.

This article describes special characteristics of deals for gas station sites and discusses essential steps for parties considering acquisition and development of these sites.

### Downstream Divestment—Selling the Crown Jewels

Over the last 15 years, the major players in the oil industry<sup>2</sup> (the “majors” or “big oil”) divested the vast majority of their gas station real estate holdings in the U.S. For instance, Shell Oil Company and Motiva Enterprises LLC divested approximately 5,000 to 6,000 of their retail gas station properties, either in a single-site or portfolio (bulk sale) format. During that same time frame, all of the other major oil companies, e.g., ExxonMobil, ChevronTexaco, BP/Arco, likewise divested several thousands of their retail gas station holdings, primarily in portfolio sales.<sup>3</sup> After the portfolio sales were completed, the oil companies concentrated on the remaining single-site sales. As it stands today, very few retail gas stations in the U.S. are owned by big oil.<sup>4</sup>

One consequence of this divestment has been the increased availability of gas station sites for redevelopment, often by parties that may not be aware of the development challenges posed by the sites.

### Solid and Comprehensive Due Diligence—Environmental and Otherwise—Is Essential

Prior to jumping into a full due diligence plan for a specific gas station or former gas station site, which is costly and time

consuming, you should conduct a high-level mini-review of the site, including its history, proposed use, and zoning, and assess the developer’s tolerance for risk and patience for navigating the due diligence process. Title should be preliminarily reviewed for the various deed restrictions, covenants, and access agreements of record. This quick research often can identify big oil restrictions and covenants instituted by big oil, or big oil rights of first refusal that may affect or stand in the way of a purchase or development plan (more on all of these below). If the gas station is currently operating, check on the tenant’s or operator’s lease rights and rights under the Petroleum Marketing Practices Act, which provides franchisees with certain rights.<sup>5</sup> Zoning is also a key factor, and a determination should be made up front whether the desired new use for the property is reasonably attainable under current zoning laws and use restrictions of record.

In developing your due diligence plan, you should consider and analyze the following basic components: (i) environmental; (ii) title/oil company indemnities, restrictions, and requirements; (iii) land use and zoning; (iv) risk and liability; and (v) financial review/cost recovery. Gas stations are not like other commercial properties, as they come with a unique set of restrictions, obstacles, and environmental risks from petroleum hydrocarbon contamination. Additionally, in the case of service station sites with repair shops, there is often evidence of chlorinated solvents such as TCE (trichloroethylene) and PCE (tetrachloroethylene) arising from the use of cleaning agents for metal engine parts. Every developer is different; some are risk prone and some are risk averse. For certain properties and developers, a go/no-go decision is reached at this very preliminary stage of review.

### Those Pesky PSAs, Conveyance Documents, and Restrictions

The majors have invested considerable sums in building their brands and marketing networks over many decades, and they generally value each and every branded retail site. In the

<sup>1</sup> The actual number of gas stations varies depending on the source. According to the Gasoline and Automotive Service Dealers Association, as reported in the *New York Times* in April 2016, the number of gas stations nationwide decreased from 300,000 a decade earlier to less than 140,000. See Sarah Maslin Nir, *With Gas Station’s Closing, a Fuel Desert Expands in Manhattan*, N.Y. TIMES (Apr. 15, 2016), <https://www.nytimes.com/2016/04/16/nyregion/a-gas-station-closes-in-soho-making-lower-manchattan-a-gasoline-desert.html>. See also NACS, 2015 RETAIL FUELS REPORT 30 (2015), [http://www.nacsonline.com/YourBusiness/FuelsReports/2015/Documents/2015-NACS-Fuels-Report\\_full.pdf](http://www.nacsonline.com/YourBusiness/FuelsReports/2015/Documents/2015-NACS-Fuels-Report_full.pdf) (“There were 152,995 total retail fueling sites in the United States in 2013, the last year measured by the now-defunct *National Petroleum News*’ Market Facts. This was a steep and steady decline since 1994, when the station count topped 202,800 sites.”). The *Times* article also noted that a *Wall Street Journal* analysis in 2014 had said there were only 12 gas stations in Manhattan below 96th Street but that several of those stations had since closed.

<sup>2</sup> The oil industry has come a long way from the domination by the “seven sisters” in the period leading up to the oil crisis of the 1970s. See ANTHONY SAMPSON, *THE SEVEN SISTERS: THE GREAT OIL COMPANIES AND THE WORLD THEY SHAPED* (1979); Carola Hoyos, *The new Seven Sisters: oil and gas giants dwarf western rivals*, FIN. TIMES (Mar. 12, 2007), <http://www.ft.com/cms/s/471ae1b8-d001-11db-94cb-000b5df10621.html>.

<sup>3</sup> Various articles reported on the industry-wide divestment activity. See, e.g., Angel Abcede & Bill Donahue, *Battle Zones: Are Major Oil Sell-Offs ‘Last Stand’ for Jobbers, Retailers?*, CSP MAG. (Mar. 2007), [https://matrixcmg.com/wp-content/uploads/2014/11/matrix\\_news\\_55.pdf](https://matrixcmg.com/wp-content/uploads/2014/11/matrix_news_55.pdf); Alan Chernoff, *ExxonMobil to sell 2,220 gas stations*, CNN (June 13, 2008); *Exxon to sell all of company’s gas stations*, NBC NEWS.COM (June 13, 2008), [http://www.nbcnews.com/id/25126563/ns/business-oil\\_and\\_energy/t/exxon-sell-all-companys-gas-stations/#.WQ4C0oWcFm8](http://www.nbcnews.com/id/25126563/ns/business-oil_and_energy/t/exxon-sell-all-companys-gas-stations/#.WQ4C0oWcFm8); Steven Mufson, *Local Firms Snatch Up More Gas Stations as Big Oil Moves On*, WASH. POST (July 20, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/19/AR2009071901916.html>.

<sup>4</sup> The thesis and guidance of this article apply to any gas station site, not solely “big oil” sites.

<sup>5</sup> Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801–2841. You should also obtain and review the dealer lease and ancillary agreements, confirm the status of termination or non-renewal, and research relevant state law.

process of developing their divestment strategies and plans, the oil companies for legitimate business reasons have sought protection, comfort, and control from the grave to protect their interests. The purchase and sale documents used by different big oil companies may have varying terms, but they are all very similar in that they convey the gas station or former gas station real property and related assets to the buyer while tying up and restricting the use and terms under which the developer or buyer can subsequently use or sell the property. Gas station sites sold by big oil in a portfolio or “market” sale to a wholesaler, or in single-site sales to retailers or developers, consistently have certain subsequent conveyance requirements, use restrictions, reservations of rights, covenants, rights of first refusal (ROFRs), indemnity obligations, and access requirements that encumber the property on and after the closing of the sale. These obligations, requirements, and restrictions are usually found, not just in the deed from big oil (which ordinarily contains several covenants and restrictions agreed to in the deed by the buyer’s counter-execution), but also in other deal documents, such as the purchase and sale agreement (PSA), the branding agreement, the wholesale marketer agreement, the access agreement, and the indemnification and release agreement.

As a result of the majors’ divestment activity, there has been a significant reduction and reshuffling of oil company personnel and counsel, and you should allow for extended lead times in dealing with any of these issues, particularly if you are seeking a waiver of any of these requirements or restrictions. When big oil is in the chain of title, you should start the due diligence process by analyzing the terms, conditions, restrictions, and requirements attached to the sale or purchase of the property. Otherwise, you may find yourself in the position of being two weeks away from the closing, only to discover that there are several time-consuming big oil contractual requirements, consents, or internal approvals that have not yet been addressed that will delay, or in some cases kill, the closing. Be aware that the PSA and related conveyance documents may contain certain unfamiliar traps for the unwary or inexperienced, some of them constituting title objections that need to be cleared to satisfy investors, lenders, purchasers, developers, or title companies. Common big oil requirements and restrictions may include the following:

- Future conveyance requirements, usually for a set term of years, that require the buyer prior to any subsequent sale or conveyance of a site to obtain a Phase II Environmental Site Assessment (Phase II) and provide a copy of such Phase II to the big oil seller.
- Requirement to obtain a written access agreement from any subsequent purchaser in a form agreeable to or approved by the big oil seller (i) acknowledging the environmental risks and the oil company’s continuing access rights, and (ii) making the subsequent purchaser assume (a) the prior buyer’s indemnity obligations to the big oil seller under the prior PSA, and (b) the future conveyance requirements of the PSA, thus extending these future

conveyance requirements to the next deal in the chain (sometimes *ad infinitum*).

- Use restrictions that prohibit competitive petroleum and related uses.
- Use restrictions that prohibit environmentally sensitive uses.
- Development restrictions and requirements, including capping requirements, excavation and subsurface disturbance restrictions, and clean fill requirements.
- Requirements for vapor mitigation barriers and sub-slab depressurization systems (SSDSs).
- Brand covenants and restrictions governing future gas station use for sites remaining “in commerce.”
- For sites being taken “out of commerce,” non-petroleum use restrictions prohibiting any gas station use.
- ROFRs and rights of first offer (ROFOs) that need to be extended by the owner/seller to the oil company by formal notice, with appropriate recordable waivers obtained.

### How Restrictive Are Use Restrictions?

Use restrictions are typically contained in the deed from big oil, and may include, among other conditions, prohibitions on the installation of wells, tanks, pumps, or related equipment for the storage or use of potable water, and prohibitions on residential, child care, elder care, hospital, school, playground, or park uses. They also prohibit basements (which increase an oil company’s environmental risk and exposure due to the possibility of vapor intrusion), and often require an asphalt or concrete cap to be maintained on the site. Use restrictions may also involve a requirement of no material change in the use of the site that would increase the level of cleanup required by any governmental entity for any preexisting environmental condition affecting the site prior to the closing date.

If the site is sold by big oil in a single-site sale to go “out of commerce,” there will likely be a non-petroleum use restriction contained in the conveyance deed, requiring that for a certain lock-out period—typically 10, 15, or 20 years—the site may not be used for the sale, storage, advertisement, or distribution of motor fuel or petroleum products. Also, be aware that other use restrictions affecting a site could be contained in a separate environmental deed notice recorded against the property. The deed notice typically controls the uses to which the site can be put.

Depending on how many years have passed since the sale of the site by big oil, some of these restrictions and requirements may be negotiated out or waived by big oil. However, you should have that discussion early in the process so that the parties will have time, if needed, to obtain the Phase II, negotiate any required access agreement form with big oil’s counsel, and negotiate an assignment and assumption document with big oil’s counsel under which the PSA indemnity and future

conveyance obligations can be assumed. Be aware that even though most big oil documents require the subsequent buyer to assume the indemnity obligations owed to big oil, it is unlikely that big oil will release the current property owner upon assignment of these indemnity obligations to the subsequent purchaser. In addition, any indemnities owed by big oil to its original buyer, even if still in effect, will probably not transfer to the subsequent purchaser.

If a site is being purchased for development, the release or modification of one or more use restrictions may be negotiated with big oil. For example, the residential use restriction might be released by big oil if the subsequent purchaser agrees to assume all environmental liability at the site and to release and indemnify big oil for all claims, and also agrees to certain building requirements such as, for example, the installation of a vapor barrier. Similarly, the release or waiver of the “no basement” restriction might be achieved with the developer’s assumption of environmental liability, release and indemnity of big oil, and agreement to certain building requirements. Likewise, the requirement of a concrete or asphalt cap might also be released, at least as to a portion of the site, with the same purchaser assumption of environmental liability, release and indemnity of big oil, agreement to certain no-dig requirements, installation of several feet of clean soil at the site, and other building requirements. Each oil company is different, and in some cases letters of credit, significant environmental insurance policies, and credit-worthy guarantors are required for certain deed modifications, such as allowances for basement or residential use (particularly when working with ExxonMobil).

### **ROFRs and Brand Covenants—The Sacred Cows?**

In addition to use restrictions, sites sold by big oil will generally be subject to a brand covenant and a ROFR for a certain time period (10, 15, or 20 years) after closing on the initial sale of the property by big oil. The purpose of the brand covenant and ROFR is to allow big oil to control and maintain its brand at a site for a certain term after the sale and to thwart competition. The brand covenant and ROFR are considered non-cash consideration received by big oil for the sale of the site and there is a significant value attributed by big oil to each of these rights. They are typically set out in the conveyance deed from big oil and in the branding agreement, which is an exhibit to the PSA.

The brand covenant, which runs with the land, would only apply to continued future petroleum use of a site where motor fuel will be sold, stored, advertised, or distributed from the premises. In other words, if a site is purchased for “out of commerce” future development and use—as a CVS drugstore, for example—the brand covenant will not apply to the proposed non-petroleum use of the site even though it may still be in effect. Since the brand covenant runs with the land, if the CVS site were to revert back to petroleum use it would then have to comply with the brand covenant. In some rare cases, a brand covenant may require a property to be used solely for petroleum use, in which

case a negotiation to obtain a waiver or to take that site “out of commerce” may fail or become very costly. Also, in many cases, taking a branded gas station “out of commerce” involves compensating the oil company for its loss of volume and brand awareness, either by substituting replacement volume at another location, or by providing cash consideration.

The ROFR, in addition to providing big oil an opportunity to step back into ownership of a site that it may not want to go “out of commerce,” is also a valuable tool that allows big oil to make sure that future conveyance requirements such as those discussed above are addressed and met, and that compliance with all use restrictions is maintained. The ROFR typically requires notice of a subsequent conveyance of the site. The notice is provided by (1) a good-faith affidavit that affirms that the proposed sale is a bona fide offer from a third party and (2) a copy of the executed sales contract so that the big oil ROFR holder may determine whether it desires to exercise or waive the ROFR. Keep in mind that the ROFR will grant the big oil ROFR holder a time period—typically 20, 30, or 45 days—to make its determination to either exercise or waive the ROFR. Thus, you cannot wait until two weeks before closing to provide notice of sale to the ROFR holder and expect to be able to timely close the subsequent conveyance deal, particularly since the ROFR waiver, in recordable form, is generally required by most title companies to clear the related title objection.

A release of the brand covenant or the ROFR may be negotiated, but the branding agreement contains a “brand covenant payment” formula that defines the liquidated damages to which big oil would be entitled for release of the brand covenant of record and to amend a distributor/purchaser’s branding agreement to drop the site from that agreement. The brand covenant payment reflects the present value over the remaining term of the minimum annual gallons projected to be sold at the site multiplied by the liquidated damages cents-per-gallon multiplier (anywhere from \$0.02 to \$0.06 per gallon). If the brand covenant payment is made, a recordable release will be provided that releases both the brand covenant and the ROFR. If only a release or waiver of the ROFR is requested, big oil will provide a recordable waiver or release of the ROFR in consideration for a much smaller dollar amount, and in some cases no payment is required.

### **Let’s Talk About Environmental Indemnities and Access Agreements**

As mentioned above, the big oil PSA will contain certain indemnity obligations, including environmental indemnity obligations, that a subsequent purchaser will be required to assume. Furthermore, be aware that under at least some big oil PSAs, the indemnity obligations owed by big oil to its original buyer will expire after a certain time period or upon certain action or inaction of the buyer. In particular, the environmental indemnity obligations owed by big oil to its buyer will ordinarily expire after 36 to 60 months as to the majority of the sites in a portfolio sale. Once those environmental indemnity obligations expire, big

oil will transfer its environmental liability and remediation and monitoring obligations to the buyer and the buyer's subsequent purchaser.

If your client is the subsequent purchaser, make sure to carefully review the indemnity obligations that your client is being required to assume. Often a buyer has obligations to comply with certain conditions to obtain the benefits of an oil company's environmental indemnity. You should make sure that those obligations and conditions were fully satisfied and not breached if you are seeking to recover costs or to hold the oil company responsible under the environmental indemnity. Some majors' PSAs and conveyance documents contractually absolved and released them from all environmental liability. In the case of ExxonMobil's divestment program, it paid and contracted with a third-party environmental consultant to assume responsibility for remediating all existing "covered contamination" identified in the transactional documents and data room prior to the sale, and was released from liability. The various ExxonMobil purchasers assumed liability for "non-covered contamination."

When big oil sold off retail sites, as part of the closing deliverables, the parties executed an access agreement for each site, which granted big oil a license for access and right of entry onto the site after closing. As mentioned above, a requirement for any future conveyance of the site will be for the subsequent purchaser to execute a new access agreement with big oil granting that same license for access and entry into or onto the premises. Instead of creating a new access agreement document, the subsequent purchaser may assume the existing access agreement obligations with big oil's consent.

As part of your initial due diligence, you should request that big oil's counsel provide you with information on the current environmental conditions at the site and whether closure or a "no further action" (NFA) letter has been obtained by big oil. You should also request a waiver of the requirement for a new access agreement and a termination of the existing access agreement of record if big oil is no longer in need of, or entitled to, access to the site. Whether or not the oil company or seller has given an environmental indemnity, and notwithstanding the existence of an NFA letter or other closure determination, when it comes to environmental due diligence, significant thought needs to be given and preparation needs to be done before purchasing or developing a gas station site.

### The "Phase I" Should Not be Taken for Granted

The environmental due diligence review starts with a Phase I Environmental Site Assessment (Phase I ESA) performed in

accordance with ASTM standard E1527-13. (Such review constitutes the "All Appropriate Inquiry" necessary as a threshold matter to take advantage of certain liability defenses and protections for purchasers of contaminated properties.<sup>6</sup>) The scope and purpose of a Phase I are tailored to the interests and goals of the developer. The value of a well-done Phase I ESA cannot be overemphasized. A Phase I is non-invasive, relying on the use of an environmental database search report produced by a third-party environmental data company, such as Environmental Data Resources (EDR), from public records and governmental sources. An EDR Environmental Database Search Report customarily includes some or all of the following environmental data: Site History; Prior Uses; Radius Map; Spill Reports; Sanborn Maps; Aerial Photos; Surrounding Property Map; CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) and RCRA (Resource Conservation and Recovery Act) records; Environmental Liens; Ground Water Flow Direction Map (if available); and LUST (Leaking Underground Storage Tank) Records, among other data.

The Phase I process also includes an on-site inspection, an interview with the property owner or owner's representative, and appropriate freedom of information law (FOIL)<sup>7</sup> requests made to local, state, and federal agencies including the U.S. Environmental Protection Agency, the respective state environmental regulatory agency,<sup>8</sup> and local fire and health departments and other agencies having jurisdiction over underground storage tanks (USTs) and environmental matters. In New York City, for example, there is overlapping jurisdiction by several different City and State agencies and departments, including the New York State Department of Environmental Conservation (DEC) (petroleum bulk storage systems and environmental remediation and compliance), New York State Department of Health (soil vapor issues), New York City Fire Department (USTs), New York City Department of Buildings (USTs), and the New York City Mayor's Office of Environmental Remediation (OER) (environmental zoning designation ("E"-designation, discussed below), environmental remediation, and Voluntary Cleanup Program).

The prior uses of the property, and building department records, should be analyzed for evidence of other environmentally sensitive uses that might be prone to the release of hazardous materials other than gasoline, and evidence of abandoned USTs. Diesel fuel, waste oil, TCE, and PCE are common contaminants found at gas station sites in addition to gasoline. For remediation and disposal purposes, petroleum-impacted soil and groundwater are in many cases considered contaminated but "non-hazardous" and are considerably less expensive to remediate than "hazardous"

<sup>6</sup> Amendment to Standards and Practices for All Appropriate Inquiries Under CERCLA, 78 Fed. Reg. 79319 (Dec. 30, 2013) (codified at 40 C.F.R. Part 312).

<sup>7</sup> The federal Freedom of Information Act is codified at 5 U.S.C. § 552. New York's freedom of information law is codified in Article 6 of the Public Officers Law (Sections 84–90). A complete list of states' freedom of information laws compiled by the National Freedom of Information Coalition is available at <http://www.nfoic.org/state-freedom-of-information-laws>.

<sup>8</sup> A comprehensive list of health and environmental agencies for each U.S. state can be found at <https://www.epa.gov/home/health-and-environmental-agencies-us-states-and-territories>.



substances. Diesel fuel,<sup>9</sup> TCE, and PCE are considered “hazardous” materials in most jurisdictions,<sup>10</sup> and this classification increases the cost of removal, transportation, disposal, and remediation by a factor of approximately two to four times the cost of transportation, disposal, and remediation of petroleum contamination. The typical cost associated with excavation and remediation of petroleum hydrocarbon contamination in the soil, if encountered during construction excavation, ranges from approximately \$50,000 to \$150,000<sup>11</sup> in the normal course, not including costs of disposing of hazardous waste, USTs, groundwater treatment, engineering controls (vapor barrier, SSDS), etc. The building department and historical review, coupled with the on-site inspection, should also shed light on possible asbestos and lead paint issues that would require special handling in demolition and redevelopment and increase costs. The potential presence of asbestos or lead paint should be noted in the Phase I report, or surveyed independently.

Records and environmental data—including data on environmentally sensitive uses and spill and discharge histories—for adjacent and nearby properties must be analyzed to assess the potential for environmental impacts to the target property. During the Phase I review process, you must also review environmental zoning issues and institutional environmental controls, restrictions of record, environmental and other liens, and building department violations. For example, New York City has a unique environmental zoning law that authorizes the Department of City Planning to rezone environmentally sensitive properties such as gas stations with a so-called “E”-designation. The program was designed to ensure that the provisions and requirements set forth during rezoning actions are implemented to avoid significant adverse impacts to human health or the environment through exposure to potentially hazardous materials, unwanted sound on sensitive noise receptors, and mobile or stationary pollutants in the ambient air.<sup>12</sup> At an “E”-designated property, a developer cannot obtain a building permit from the Department of Buildings without (i) performing a Phase I ESA and Phase II ESA in conformance with an investigative work plan approved by OER; (ii) developing and obtaining OER’s approval of a remedial action work plan (RAWP); and (iii) implementing the RAWP and obtaining OER’s issuance of a Notice to Proceed to the Commissioner of the Department of Buildings indicating that OER has no objections to the issuance of a building permit. Until the Notice to Proceed is obtained, the development project is dead in the water.

Some states, such as Connecticut, have institutionalized “Environmental Land Use Restriction” (ELUR) programs as part of the menu of remedial approaches available to responsible parties in lieu of remediation. ELUR programs can affect future development and use.<sup>13</sup> New Jersey has a similar deed notice use restriction law for environmental purposes.<sup>14</sup> The use of institutional ELURs and authorized environmental deed restrictions are similar to the oil company use restrictions contained in various deeds and conveyance documents in that they restrict the property from being used in the future for environmentally sensitive purposes, such as residential, child care, elder care, hospital, school, drinking water, or playground uses. The failure to identify an “E”-designation, ELUR, or deed restriction can have a material adverse impact on gas station property acquisition and development plans.

As part of the Phase I review, all of the key environmental reports, documents, and correspondence to and from the applicable state environmental regulatory agency, the seller, and oil company/last owner (if not the seller), should be obtained and reviewed. Any spill case, whether active or closed, should be discussed with the respective state case manager and environmental consultant of record in order to determine areas of concern (AOCs), subsurface conditions, and the potential for residual contamination and USTs not evident from the environmental reports. Typically, key reports and environmental documents would include Investigative Work Plans, Remedial Action Plans, Quarterly Monitoring and Sampling Reports, Tank Closure Reports, Petitions for Spill Closure, and no-further-action determinations. This information is vital for determining the depth to groundwater and groundwater flow direction and the need for a Phase II ESA, as well as for preparing cost-benefit analyses, construction budgets, and development time-tables; for determining eligibility for state and local brownfields programs and benefits; and for assessing potential impacts to acquisition and construction budgets and financing.

These issues and reports are also relevant, if not essential, to negotiating and obtaining appropriate environmental and Pollution Legal Liability (PLL) insurance coverage, which is highly recommended. The reports also provide information about the current on- and off-site remedial requirements, the presence or absence of active and abandoned underground storage tanks, the presence or absence of monitoring wells (which should be confirmed by the on-site inspection), engineering controls and remedial systems, and potentially responsible parties (PRPs).

<sup>9</sup> This is because diesel fuel is a far heavier fuel than gasoline; thus it is more pervasive, and its excavation and remediation require more intensive removal procedures.

<sup>10</sup> See, e.g., N.Y.C. MAYOR’S OFFICE OF ENVTL. COORDINATION, CEQR TECHNICAL MANUAL (Mar. 2014), [http://www1.nyc.gov/assets/oec/technical-manual/12\\_Hazardous\\_Materials\\_2014.pdf](http://www1.nyc.gov/assets/oec/technical-manual/12_Hazardous_Materials_2014.pdf). See also 6 N.Y.C.R.R. § 597.1.

<sup>11</sup> Typical transportation and disposal costs range from \$30 to \$50 per ton. Disposal proposals should be competitively bid. Note that there is also usually a cost for transporting and disposing of “clean” soil.

<sup>12</sup> See *E-Designation Program*, N.Y.C. OFFICE OF ENVTL. REMEDIATION, <http://www.nyc.gov/html/oer/html/e-designation/e-designation.shtml> (last visited Sept. 11, 2017).

<sup>13</sup> See CONN. AGENCIES REGS. § 22a-133q-1. See *Environmental Land Use Restrictions*, CONN. DEPT. OF ENERGY & ENVTL. PROT., [http://www.ct.gov/deep/cwp/view.asp?a=2715&q=438254&depNav\\_GID=1626](http://www.ct.gov/deep/cwp/view.asp?a=2715&q=438254&depNav_GID=1626) (last visited Sept. 11, 2017).

<sup>14</sup> See N.J. STAT. ANN. § 58:10B-13 (enacted in 1993 and amended in 1997 and 2009).



The Phase I ESA also contains a description of recognized environmental conditions (RECs) and AOCs, and makes recommendations to address them. If proposed acquisition or construction financing through a lending institution is involved, the lender will often require a peer review of all Phase I ESAs provided by a developer's or purchaser's environmental consultants due to increased federal government supervision and scrutiny of banks and tightening credit. This often results in further environmental investigation including recommendations for Phase II ESAs.

### **Yes, You Really Should Perform a Phase II ... Because It's a Gas Station!**

A Phase II ESA is an invasive method of investigating subsurface environmental conditions and is the recommended and preferred due diligence tool in acquiring or developing a former gas station site. It provides a reasonable analytic snapshot of the current subsurface environmental conditions of the three media—soil, groundwater, and soil vapor—which affords the buyer and developer critical information for further negotiations, budgeting, and go/no-go decision-making. A Phase II ESA is often recommended in a Phase I ESA, and is essential for line-item construction budget estimation, particularly where substantial excavation and soil disposal or construction dewatering will be required. The results of the Phase II are often used for waste characterization to identify appropriate state-licensed disposal facilities authorized to receive contaminated soil and groundwater from the site, and to obtain competent and accurate bids and proposals from the facilities and truckers for disposal and transportation costs. In connection with residential development, there are more stringent soil and groundwater quality cleanup standards and criteria that need to be achieved in the remedial process, which can be significantly more costly than remediation for retail or other commercial use.

Generally, when conducting a Phase II investigation in conjunction with an acquisition, the buyer and seller will execute an access agreement with the owner/seller providing the buyer and its consultants access to drill and sample and requiring, in return, indemnification and insurance of the seller for any damage and injury caused during the site work. Both the seller and developer would be named as additional insureds on both the environmental consultant's and the drilling company's certificates of insurance. The insurance coverage should include environmental (PLL) coverage. If the consultant or driller does not have environmental (PLL) coverage, you should use a different consultant or driller, because since it is a former or current gas station, they are likely to find contamination and in some cases puncture a fill or return line or UST or exacerbate the environmental conditions.

The consultant should prepare an investigative work plan, scope of work, and proposed sampling map indicating the proposed sampling locations and testing protocols that would be tailored to the specific development project and site history. This must be done to obtain the most valuable real-time data for further deal negotiations, budgeting, decision-making, financing, insurance, brownfields eligibility, and development and remedial design/engineering purposes. Environmental counsel and the developer should consult and agree on the sampling plan. The sampling map should take into consideration the RECs and AOCs identified in the Phase I as well as the locations of active and former USTs, hydraulic lifts, and repair shop bays. The sampling plan should provide for testing the soil and groundwater for gasoline constituents (benzene, toluene, ethylbenzene and xylene, and MTBE) and for diesel fuel, PCE, and TCE, as well as for testing for the full complement of volatile organic compounds and semi-volatile organic compounds and their constituents (using the testing procedures commonly referred to as EPA Methods 8260 and 8270<sup>15</sup>).

In addition, appropriate soil vapor samples from the proposed construction excavation depth and below the existing slab should be taken as well to determine the potential need for installation of a vapor mitigation barrier and an SSDS system. Most environmental regulators, building departments, and lenders will require a vapor barrier and usually a passive SSDS system at former gas station sites. If the development plan calls for excavation for a single- or double-level cellar, the removal of the soil generally would remove critical source material and facilitate a simpler remedial action plan post-excavation. For the installation of an underground parking garage, building codes generally require a sophisticated air exchanger system to mitigate carbon monoxide vapors, which often satisfies most vapor mitigation requirements (such as an active or passive SSDS system) that would otherwise be required by local regulators and building departments. Groundwater at or near the proposed ultimate construction excavation depth should be sampled for dewatering analysis, dewatering system design, and budgeting purposes since contaminated water encountered in the excavation will need to be treated and filtered prior to disposal into the local sewer system or into a portable "frac tank."<sup>16</sup>

The proposed Phase II sampling plan and sampling map should be submitted to any regulatory agencies—such as zoning agencies, environmental regulators, etc.—for review and approval if current or future approvals may be sought or needed from those entities to avoid having to repeat or duplicate the Phase II. If the property borders on a subway or underground improvements owned or controlled by a governmental agency or public utility, the consultant would be required to submit the sampling plan and map and evidence of insurance, and to obtain prior approval to drill. All states require that the driller obtain utility mark-outs prior to drilling to ensure no utility lines

<sup>15</sup> See Method 8260B: Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS) (Dec. 1996), <https://www.epa.gov/sites/production/files/2015-12/documents/8260b.pdf>; Method 8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (July 2014), <https://www.epa.gov/sites/production/files/2015-12/documents/8270d.pdf>.

<sup>16</sup> A "frac tank" is a holding tank used to store contaminated water during the excavation and remediation of a contaminated site.

or conduits are at risk. A search for hidden, abandoned, or unknown USTs performed by a GPR (ground penetrating radar) survey or magnetometer search prior to or in conjunction with the Phase II site work is standard operating procedure.

Finally, the Phase II report should summarize its findings, describing any contaminants found in the soil, groundwater, and soil vapor in excess of allowable governmental standards and, as appropriate, making recommendations as to pre-construction, construction-related, and post-construction remedial steps that should be taken, including soil disposal, groundwater monitoring and sampling, treatment of groundwater during dewatering, and installation of vapor mitigation barriers, vapor extraction systems, and SSDS systems.

### Conclusions and Other Considerations

It is easy to see why gas stations can be attractive development sites, if handled properly, notwithstanding their unique environmental and non-environmental concerns. Below is a summary of the main issues to consider in connection with their development or redevelopment as well as some final points:

- A. **Title/Oil Company Indemnities, Restrictions, and Other Requirements:** You should review carefully each of the documents of record and all of the title objections to ensure that each restriction, oil company right, and purchaser obligation is fulfilled, waived, or complied with.
- B. **Land Use Restrictions:** Local zoning and use restrictions need to be carefully analyzed and an upfront determination made whether the proposed use is achievable. In some jurisdictions, environmental contamination is considered a “hardship” entitling the owner/developer to special zoning and use considerations. Allow for substantial lead time for dealing with the oil company counsel and personnel. Rome was not built in a day. Although there are no assurances that the restrictions will be waived or modified, if you are willing to negotiate and accept the conditions that go along with a modification, you have a reasonable chance of success.
- C. **Risk and Liability:** Gas station redevelopment presents obvious environmental risks. Conducting proper environmental due diligence will help identify those risks and will enable the purchaser or developer to negotiate or ameliorate those risks through careful planning, creative remedial strategies, and environmental insurance.
- D. **Environmental Insurance:** Environmental insurance is highly recommended and ordinarily covers unknown conditions, third-party personal injury and property damage claims, and, where no active spill exists, cleanup costs. It is not a substitute, however, for conducting adequate due diligence.
- E. **Financial Review and Cost Recovery:** A well-done Phase II ESA can be a valuable tool in estimating extra incremental and premium construction and development costs attributable to contamination, including the costs of further investigation, soil disposal, groundwater treatment, vapor

control, and other forms of remediation. Soil excavation and disposal generally eliminate much of the risk and contamination. While PRPs earlier in the chain of ownership or operations may be identified, you should review relevant state statutes and agreements to determine whether cost recovery claims for reimbursement are viable. Sometimes a cost-sharing arrangement may be reached with a responsible oil company in the right circumstances. Remember, however, that no responsible party will pay more than the incremental increase in costs for disposal of soil or groundwater above disposal costs for disposal of clean soil or water for a comparable “clean” site—ordinary construction costs are always borne by the developer. In some jurisdictions, a developer may be entitled to financial benefits under various state brownfield programs, oil spill fund programs, or tank funds. It pays to research.

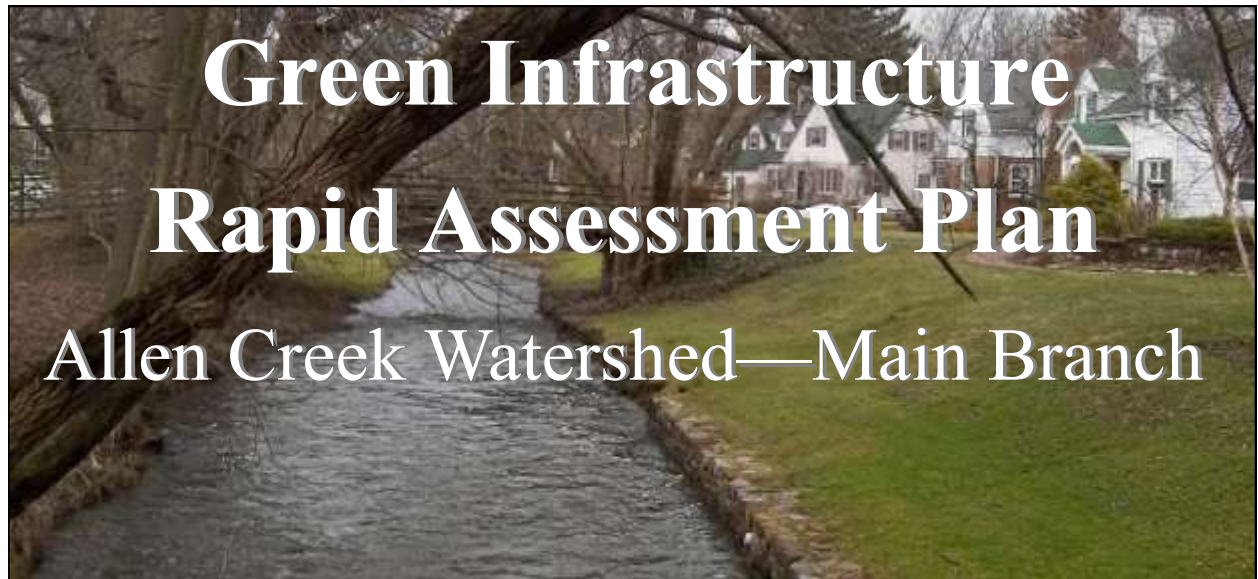
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## LEGAL DEVELOPMENTS

### ENERGY

#### Second Circuit Upheld DEC Denial of Water Quality Certificate for Natural Gas Pipeline

The Second Circuit Court of Appeals upheld the New York State Department of Environmental Conservation’s (DEC’s) denial of an interstate natural gas pipeline developer’s application for a Water Quality Certificate under Section 401 of the Clean Water Act. The Second Circuit concluded that it lacked jurisdiction to consider the developer’s argument that DEC had waived its right to rule on the application because it failed to act on the application within the time period required by the Clean Water Act. The court noted that the record indicated that DEC had never received information it had “consistently and



**Prepared by:**

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**Prepared for:**  
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Cover Photos: Upper -Storybook Drive; Lower- Corbett's Glen Park—Town of Brighton NY

Special acknowledgement needs to be given to the Center for Watershed Protection. Staff conducting this Report relied heavily on the concepts and strategies provided by the Center in its Urban Subwatershed Restoration Manual Series (CWP, 2004) and other reports and studies conducted by the Center

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# List of Abbreviations

cfs	cubic feet per second
CWP	Center for Watershed Protection
EPA	US Environmental Protection Agency
GI	Green Infrastructure
GIS	Geographic Information System
GPS	Global Positioning System
IC	Impervious Cover
NYS	New York State
NYSDEC	New York State Department of Environmental Conservation
POC	Pollutant of Concern
SWAAP	Stormwater Assessment and Action Plan
Wq	Water Quality
WS	Watershed
USGS	US Geological Survey



# Section 1. Assessment Overview

## 1.1 PROBLEM STATEMENT:

Similar to many developing areas, growth in Monroe County has caused some unfortunate consequences to water quality. One consequence is that developed areas shed larger volumes of stormwater from impervious surfaces (roads, buildings and parking lots) than natural landscapes. Because there is more volume, there is more pollution. Typical pollutants include: petroleum products and heavy metals from vehicles; fertilizers, chemicals and animal waste from lawns; and, sediment from eroded streambanks, construction sites and roadways.

A second consequence is that streams more frequently flow full or overtop their banks. High stormwater flows can cause flooding, damage property, and harm fish and wildlife habitat. Common damages from high flows include eroded stream banks, wider and deeper stream channels, and excessive sediment deposition. This degradation results in poor water quality and added maintenance costs to municipalities and property owners. In Monroe County, stormwater pollution and associated wet weather flows have harmed virtually all urban streams, the Genesee River and Lake Ontario's shoreline.

## 1.2 PURPOSE:

Developing plans to improve our impacted water resources is the objective of this the Rapid Green Infrastructure Assessment Plan (Plan). A streamlined method was devised to quickly evaluate multiple watersheds for stormwater retrofit potential. The main product is a ranked inventory of retrofit projects that, if constructed, could improve water quality and stream health and also provide flow attenuation to reduce erosive storm flows and localized drainage problems. A second significant product is the creation of multiple, electronic data files and maps that lay the foundation for future, more in-depth studies. The Plan is a simplified version of more detailed Stormwater Assessment and Action Plans being done in other parts of Monroe County. These larger studies include water quality sampling as well as modeling the effects of the current watershed's condition and the potential improvement from proposed retrofits. The field work completed for this report was kept to a minimum and only a summary report is produced (herein). The project was conducted with funding from New York's Environmental Protection Fund, the Monroe County Department of Environmental Services, and the Stormwater Coalition of Monroe County.

### 1.3 SETTING:

The main branch of Allen Creek begins at the southern end of the Town of Henrietta and flows north into the Towns of Brighton, Pittsford and Penfield. Allen Creek consists of two significant and diverse subwatersheds, Main branch and East branch (Figure 1). After merging with the East branch in Pittsford, the Creek flows through Brighton and then discharges into Irondequoit Creek in Panorama Valley (Penfield). Because of their size and diversity, the two branches were assessed separately (see also “Green Infrastructure Rapid Assessment Plan Allen Creek Watershed—East Branch”). A middle branch of the creek, referred to as West Brook, drains into the Erie Canal at lock 32 near Clover Street. Retrofits for that tributary area of approximately 1000 acres were considered in this report.

The watershed is dominated by residential land cover in the southern and northeastern areas with approximately 12,000 single family homes. A dense commercial and industrial area in the middle and western portion of the watershed includes a portion of Jefferson Road (Figure 2). Table 1 shows key watershed characteristics of the Main branch which spans

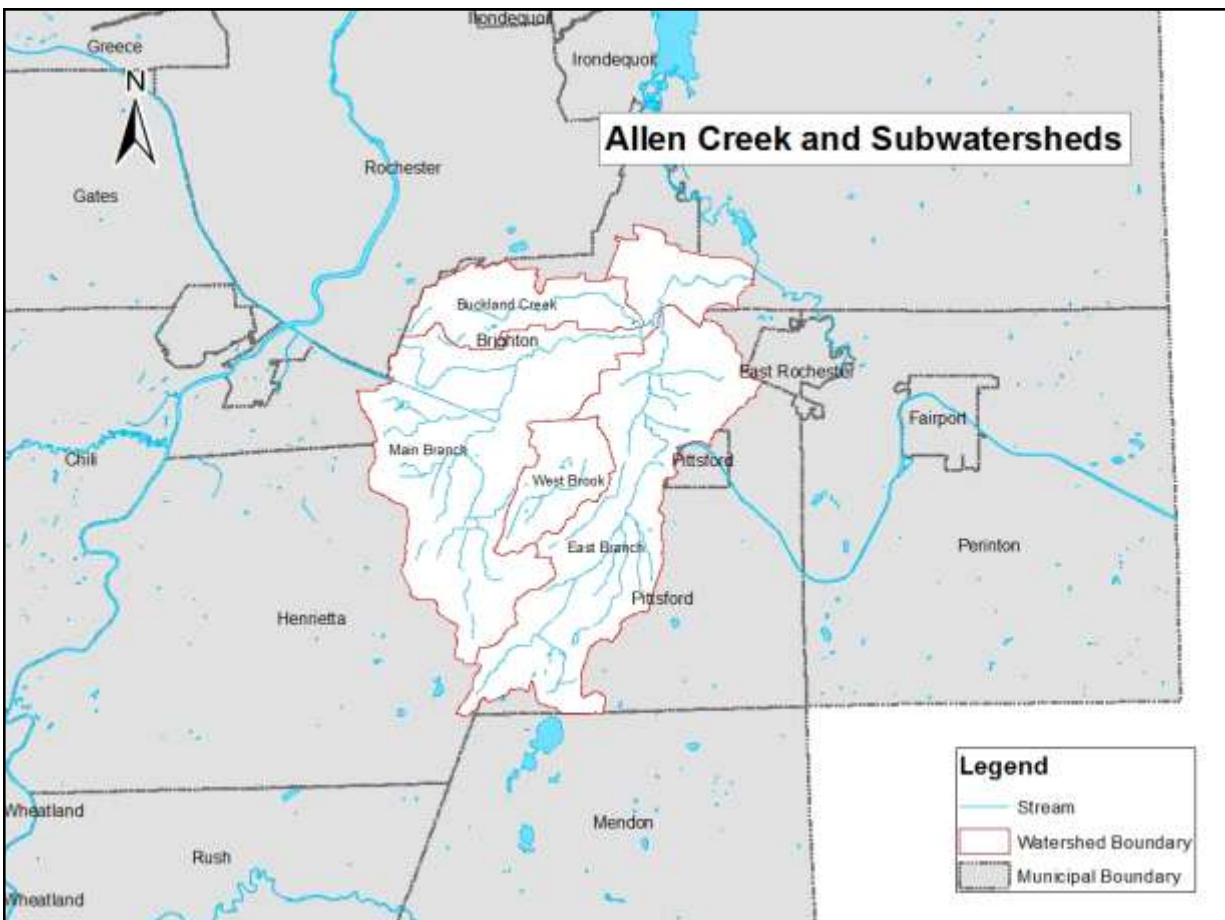


Figure 1: Allen Creek Watershed.

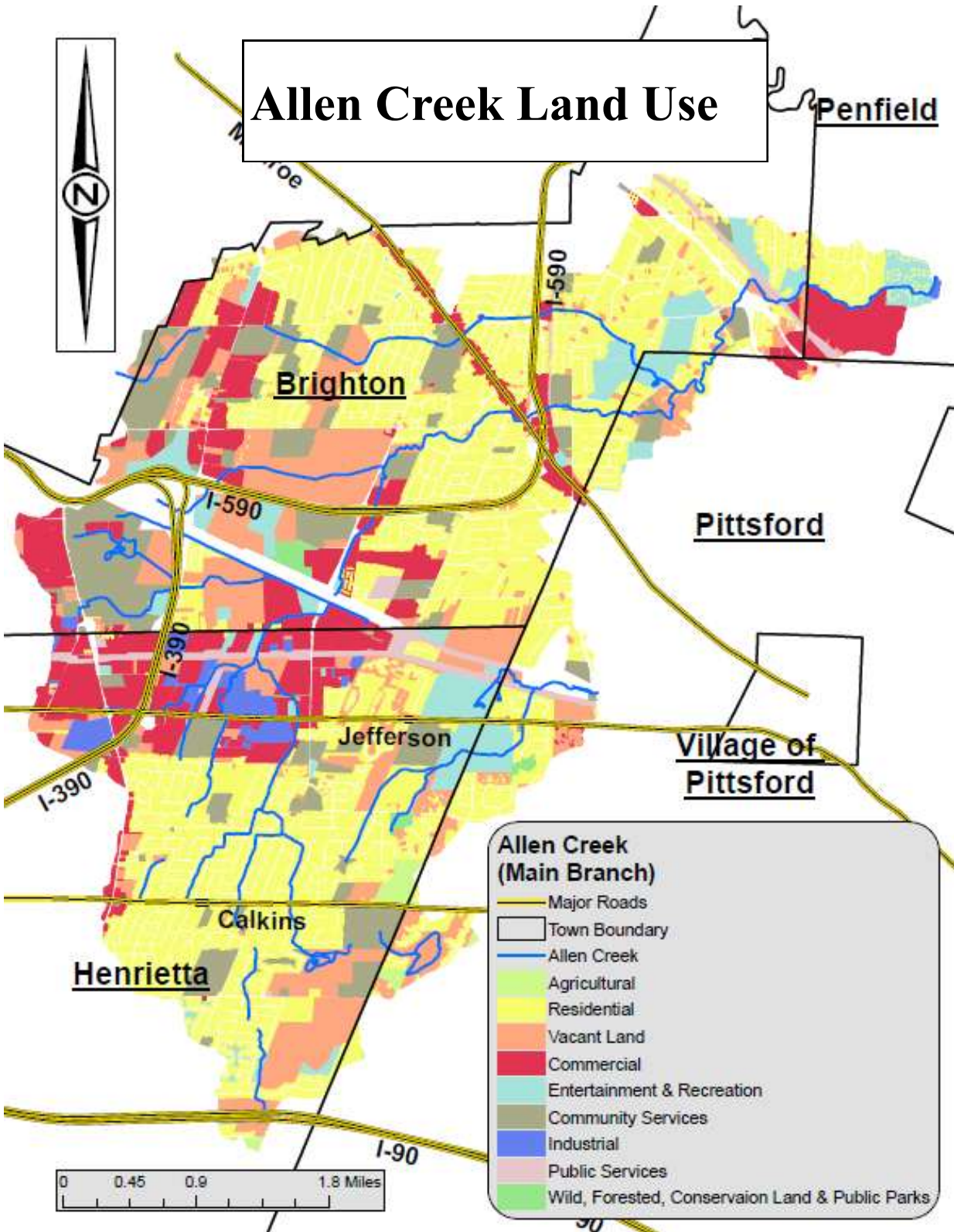


Figure 2: Land use within Allen Creek watershed.

<b>Table 1. Watershed Data</b>	
<b>Metric</b>	<b>Value</b>
Area	11,853(Acres)
Mapped Stream Length	29.4 Miles
Percent of Stream Channelized	33%
Primary/secondary land use	Residential/Commercial
Land Use (percent of watershed)	
Agricultural	2.5
Residential	40.9
Vacant Land	15.4
Commercial	14.3
Recreation & Entertainment	6..2
Community Service	14.9
Industrial	1.8
Public Services	3.6
Wild, Forested, Conservation Lands & Public	0.4
# of Stormwater Treatment Ponds	43
# of Stormwater Outfalls	548
Current Impervious Cover (%)	33
Estimated Future Impervious Cover (%)*	37
Wetland acres	1382
Municipal Jurisdiction	Brighton 53%,Henrietta 37%, Pittsford 7%, Pen-field 3%

\*Based on current zoning, future impervious cover (over the next 10 years) will increase by 4 percent.

## 1.4 WATERSHED CHARACTERISTICS:

**1.4.1 Water Quality Concern** According to the New York State Department of Environmental Conservation’s “Lake Ontario Basin Waterbody Inventory and Priority Waterbodies List” (NYSDEC 2004), Allen Creek and its tributaries have minor impairments. The waterbody datasheet states that *“Aquatic life support, public bathing and various recreational uses (fishing, boating, etc) in Allen Creek are affected by impacts from various urban/stormwater sources and other nonpoint sources in the watershed...Urban and stormwater runoff related to the high degree of impervious surface area (shopping plazas, parking lots, roadways, etc.) has been identified as the primary source of nutrients and other pollutants (pathogens, oil and grease, floatables) to the creek. A significant portion of one tributary (Buckland Creek) is enclosed and serves primarily as a storm sewer for Elmwood Avenue. Agricultural activities in the upper watershed, impacts from failing and/or inadequate on-site septic systems, tributary stream erosion and residential and commercial development throughout the watershed are also thought to contribute to nutrient and silt/sediment loadings.”*

The full (two-page) waterbody datasheet is included in Appendix B. Buckland Creek (the tributary mentioned above), has had a detailed Stormwater Assessment and Action Plan completed (Stormwater Coalition, 2010).

Allen Creek is part of the larger, Irondequoit Creek watershed which has been the focus of numerous water quantity and quality studies conducted by the U.S. Geological Survey (USGS) in cooperation with Monroe County. USGS has written extensive reports and updates that describe streamflow, examine water-quality trends and report annual loads of selected constituents to Allen Creek, Irondequoit Creek and Bay (USGS, multiple years).

The west-to-east flowing Erie Canal intersects many north flowing streams in Monroe County, with most being conveyed underneath the Canal via aqueducts. The Canal has siphon discharges to several streams in Monroe County including both the Main and East Branches of Allen Creek. Since Canal water quality is generally very poor, these discharges contribute significant pollutant loads to the receiving streams. Sampling the Creek above the Canal, from the siphon and below the Canal for about 15 years has shown concentrations of suspended material, such as turbidity, suspended solids, and phosphorus, were higher in water from the siphon than above the siphon and generally resulted in elevated concentrations and overall higher pollutant loads in the receiving streams. Removing these discharges, especially to smaller streams like Allen Creek, is a recommendation of this report.

USGS also developed a precipitation-runoff model of Irondequoit Creek watershed to simulate the effects of land-use changes and stormflow-detention basins on flooding and stormwater pollution. Results of model simulations indicated that peak flows and loads of sediment and total phosphorus would increase in the upper (rural) watershed if it became developed. Discussions between Monroe County and USGS to update the model took place in late 2012 and are a recommendation of this report as well.

**1.4.2 Impervious Cover Analysis** The Center for Watershed Protection created the “Impervious Cover Model” (ICM) to predict a typical stream’s health using the relationship between subwatershed impervious cover and stream quality indicators. This relationship has been confirmed by nearly 60 peer-reviewed stream research studies (Figure 5). The ICM shows stream quality decline becomes evident when the watershed impervious cover exceeds ten percent. The Main Branch has an average of 33 percent impervious cover identifying stream quality somewhere between poor and fair and non-supporting of aquatic



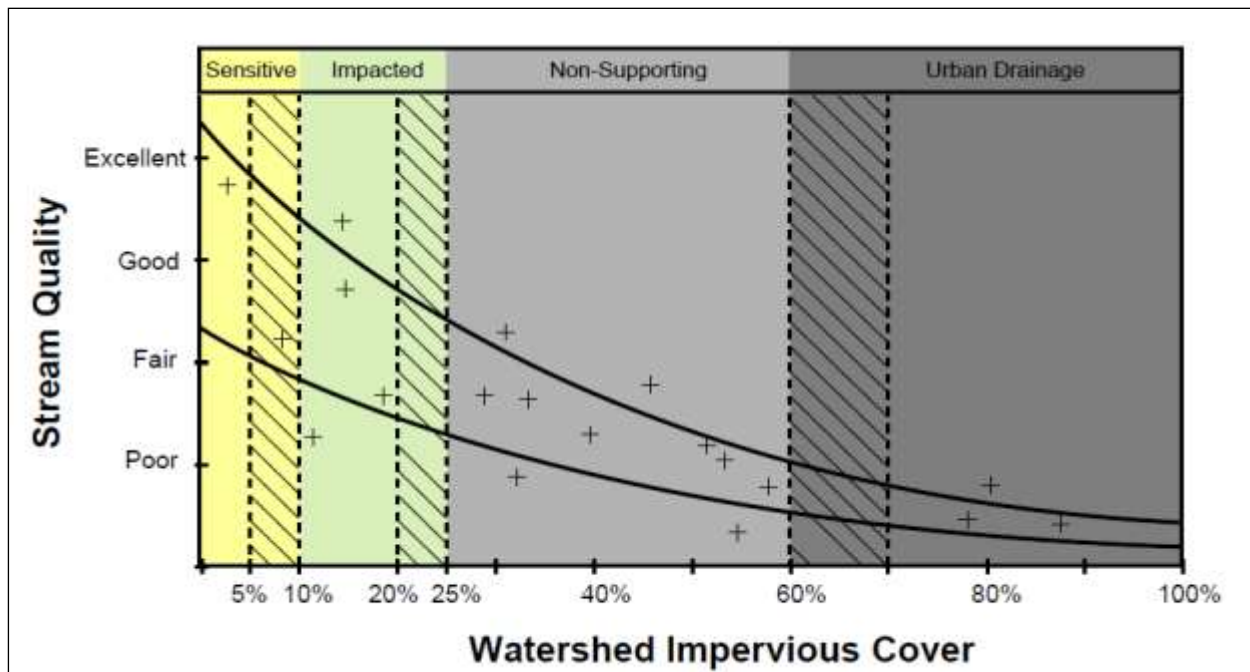


Figure 3: Impervious Cover Model

**Drainage Concerns** Typical of land development in the 1950's and 60's, extensive channelizing and piping of the Creek has caused adjacent neighborhoods to flood during larger storm events. This is true of a large area of older residential neighborhoods in the Southern portion of the watershed, south of Castle Road. The Town of Henrietta commissioned studies of this area (Lu Engineers 2009) which identify remedial measures, some of which ranked well in this assessment.

Due to the extensive urban development of the watershed, the Creek experiences continual flooding issues at the intersections of Calkins Road and Farnsworths Road South, Calkins Road and Barnsfield Road, and Calkins Road and Thompson Road. Drainage concerns in the Town of Brighton include some flooding of yards in the Evans Farm Subdivision Idlewood Road (east of Winton Road and South of Westfall Road).

**Streambank Erosion** The Creek has numerous locations of eroding stream banks and has been armored through most of the developed portions of the watershed, but is most severe in its lower reach (Figure 4). Here the Creek moves from an upper plain elevation near the intersection of NYS 490 and 441, 390 feet down into the Irondequoit Creek valley to the confluence of Irondequoit Creek at elevation 275 feet. This section contains open space with waterfalls that the Town of Brighton purchased creating the Corbett's Glen Nature Park with residential and commercial land uses downstream in the Town of Penfield.





Figure 3: Severe streambank erosion above Corbett's Glen (note railroad embankment at top of bank)

The Town of Penfield commissioned a study of this area, *Preliminary Geomorphic Assessment of Allen Creek* (Barton & Loguidice 2011). Excerpts related to the dynamic nature of stream channels and how the rate of erosion is affected by adjacent and upstream land use are copied below:

*If left unaddressed, the ongoing destabilization of the Allen Creek channel will continue... These changes in channel form will result in continued erosion of streambanks and development of areas of excessive streambed scour and deposition. Likewise, excessive deposition of these eroded bed and bank materials through various portions of the channel will lead to more frequent and intense flooding in these areas, as continued sediment deposition continually reduces flood capacity of the channel. This process will also lead to continued streambank erosion as the channel continues to widen in an attempt to reestablish adequate bankfull flood capacity...Consequently if left unaddressed, the condition of the stream corridor will lead to continued flooding, bank erosion, and streamside property loss...Allen Creek will continue to result in a decline in the quantity and quality of instream habitats and populations of fish and other aquatic organisms, directly impacting the quality of the recreational fishery provided by this stream...The best results will be achieved if the stream management plan is approached at the watershed or systemic scale, addressing issue areas that have the most significant impact on adjacent downstream areas.*

*Doing so will require the establishment of a broader-based entity (such as a multi-municipality stormwater coalition) or collaborative partnership between neighboring municipalities contained within the watershed...Reducing the impact of developed areas of the watershed upon stream performance is another avenue by which erosion and channel destabilization problems along Allen Creek can be minimized. Existing stormwater management features, such as detention basins, retention ponds, etc. can be retrofitted to increase infiltration and reduce stormwater runoff to the Creek. This approach not only works to better attenuate the high volume of stormwater runoff entering the stream during storm events (which tends to exacerbate bed and bank erosion problems), but also provides the ecological benefits of recharging the groundwater aquifer (resulting in more available streamflow during dryer, low-flow periods of the year) and also reduces the temperature of stormwater discharged to the Creek (an important consideration in maintaining the character of a cold-water fishery like Allens Creek). Even smaller-scale efforts, such as retrofitting existing storm gutter and storm drain systems, and creating bio-retention swales and rain gardens in areas with high runoff rates can have a positive effect upon increasing infiltration and groundwater recharge, reducing the impact of the watershed's existing stormwater infrastructure upon the stability of Allens Creek.*

**Soils** A simplistic yet useful way to define how much stormwater runs off the pervious land surface is to determine soils' infiltration capabilities, their ability to absorb stormwater. Soil scientists have categorized soils into four categories, A through D. "A" and B soils are well drained and absorb much of the stormwater that drains on or over them. C and D soils are more poorly drained. However, the soils in some parts of this watershed are not categorized, denoting areas that have been so altered by land development that grouping a specific soil type is not feasible. The amount of each soil type in Allen Creek Main Branch is: A soils 5%; B soils 37%; C soils 42%; D soils or not verified 15% (Figure 5).

The large percentage of B soils will allow for infiltration-type stormwater retrofits. These practices installed in the upper parts of the watershed can prevent and reduce flooding, drainage problems, and streambank erosion as well as greatly improving water quality in Allen Creek.

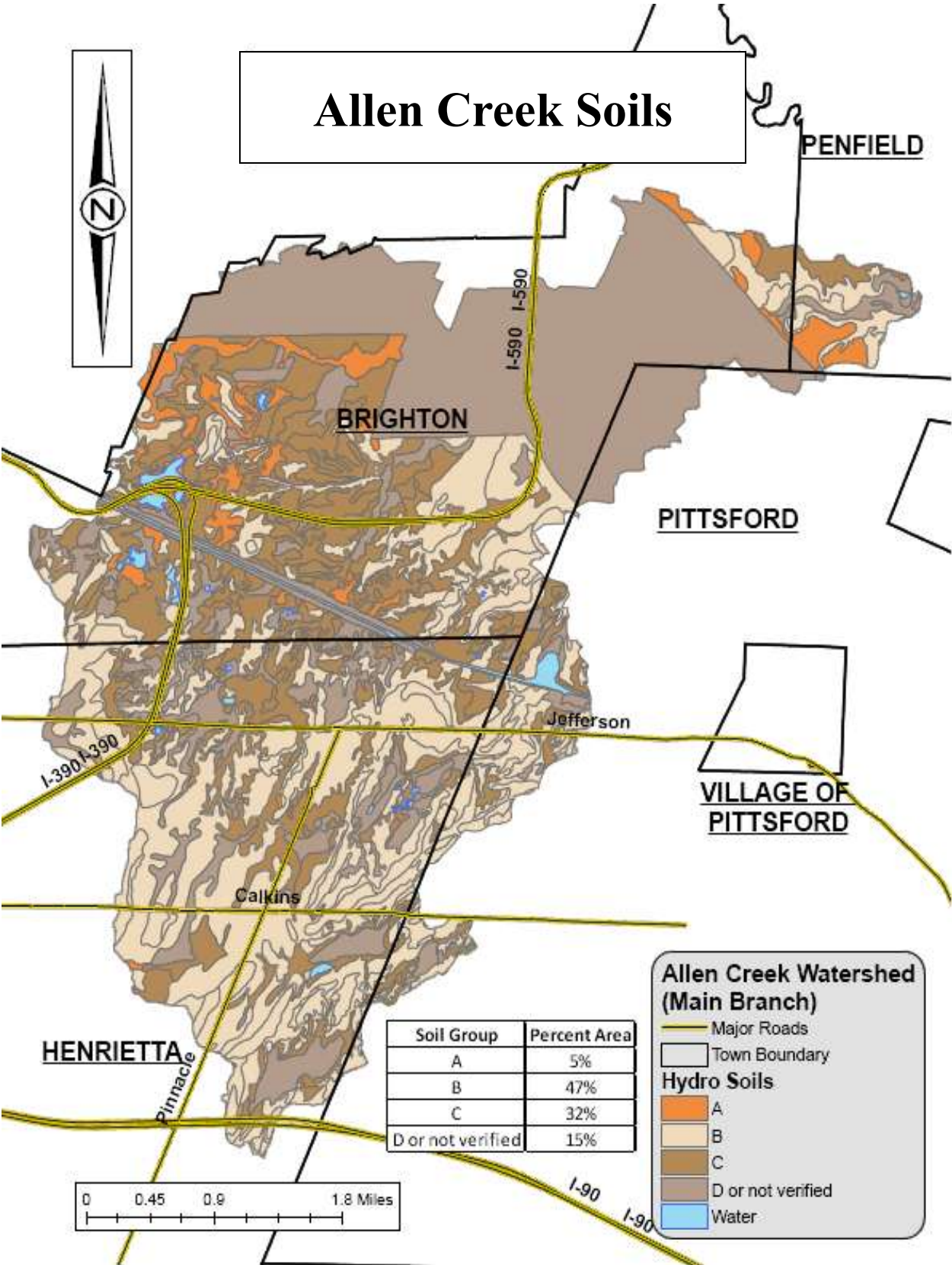


Figure 5: Hydric Soils Map of Allen Creek Main Branch

## Section 2. Retrofit Inventory

An inventory of potential retrofit sites was generated using GIS mapping tools to locate public properties, stormwater practices like ponds, old urban areas (built before stormwater management requirements) and, pervious soil areas. Next, the appropriate stormwater management practice was determined for the properties identified and those were ranked based on their feasibility, how much they would improve water quality and, cost effectiveness. While the stormwater management practice types focused on green infrastructure (stormwater volume-reducing practices such as infiltration), project types include retrofitting stormwater ponds as a highly cost-effective practice. Stormwater pond projects rank well and are a recommended component of watershed restoration. Complete details of methods used to complete the rapid assessment and retrofit ranking is explained in a reference document titled “Assessment Methodology, Project Descriptions, and Retrofit Ranking Criteria For Monroe County Green Infrastructure Rapid Assessment Plans”.

Two broad categories of retrofit project types were considered:

- 1) New stormwater ponds, upgrades to existing stormwater ponds and adding stormwater storage to existing drainage channels.
- 2) Green Infrastructure (GI). This category was divided and ranked by where a GI project might be installed and includes:
  - Public Right of Ways,
  - Older Residential Neighborhoods, and
  - Other Locations (such as areas with large impervious surfaces ie shopping malls)

Green infrastructure projects can be installed on private property as well as in the right of way on neighborhood streets, major roadways, and highways. These types of projects involve the modification of concrete channels and stormwater conveyance systems. Green infrastructure projects on private property involve the installation of rain gardens to capture and retain roof runoff.

Other watershed retrofitting that would help meet water quality goals include the investigation and remediation of any stormwater hotspots (Appendix C) and dechannelization and revegetation of straightened and degraded stream corridors (Appendix D). However these projects are outside the scope of this report and therefore were not ranked. Figure 6 shows project locations and project numbers within the watershed. Table 2 lists project addresses and how they scored. Diagrams of the top scoring projects follow the table.



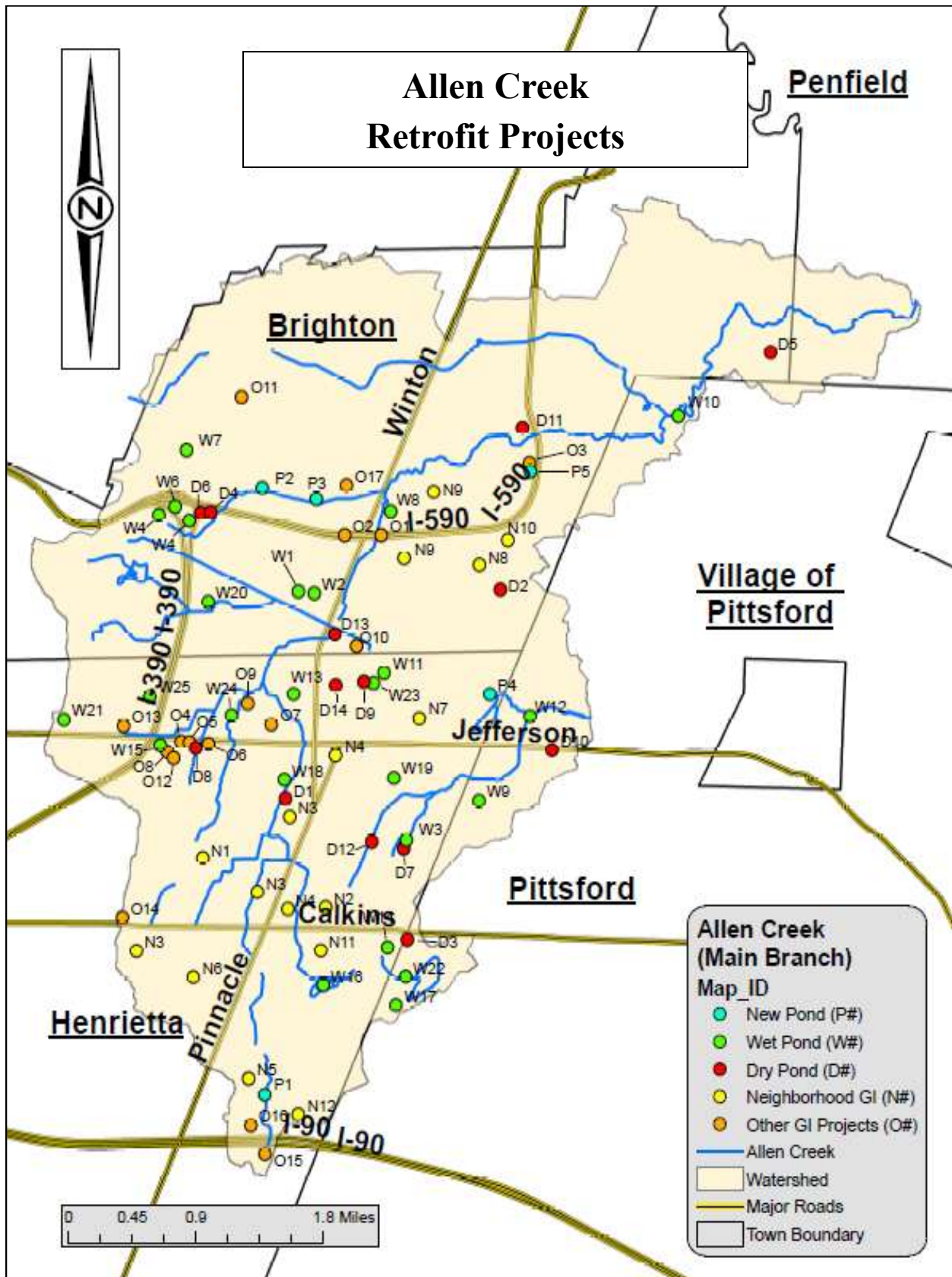


Figure 6: Map of potential projects within the Allen Creek main branch watershed.

**Table 2. Allen Creek Main Branch Retrofit Ranking List**

Map I.D.	Project Type	Overall Rank	Project Location	Feasibility	Watershed Benefits	Cost Effectiveness	Score
D2	Dry Pond	1	Heatherstone Lane - Brighton	5	I, FS, WQ, CP	3	13
D3	Dry Pond	2	Pittsford-Henrietta Town Line Road and Calkins	5	I, FS, WQ, CP	3	13
P2	New Pond	3	1435 Westfall Road	5	I, FS, WQ, CP	3	13
P3	New Pond	4	1149 Westfall Rd	5	I, FS, WQ, CP	3	13
W20	Wet Pond	5	Woodsmeadow off Clinton South	5	I, FS, WQ, CP	3	13
D7	Dry Pond	6	High Stone Circle	5	I, FS, WQ	3	12
D6	Dry Pond	7	B/w I-390 N and I-390 to NB I-590 (Fed. WL)	4	I, FS, WQ, CP	3	12
P1	New Pond	8	Gate House Trail	4	I, FS, WQ, CP	3	12
W8	Wet Pond	9	1890 Winton Rd South	4	I, FS, WQ, CP	3	12
D4	Dry Pond	10	B/w I-390 to NB I-590 ramp and I-590	4	I, FS, WQ	3	11
O3	Bioretention	11	I-590 and Monroe Ave junction	4	I, AB, FS, WQ	2	11
P5	New Pond	12	I-590 and Monroe Ave junction	4	I, FS, WQ	3	11
D10	Dry Pond	13	West Jefferson Road (behind 160 Office Park Way)	3	I, FS, WQ, CP	3	11
D13	Dry Pond	14	3450 Winton Place	3	I, FS, WQ, CP	3	11
D5	Dry Pond	15	Corner of Route 441 and Linden Ave.	3	I, FS, WQ, CP	3	11
D8	Dry Pond	16	1215 Jefferson Road	3	I, FS, WQ, CP	3	11
D9	Dry Pond	17	90 Goodway Drive	3	I, FS, WQ, CP	3	11
W13	Wet Pond	18	3111 Winton Road South	3	I, FS, WQ, CP	3	11
W1	Wet Pond	19	Meridian Centre off Winton Rd South (Park)-1	5	FS, WQ, CP	3	10
W2	Wet Pond	20	Meridian Centre off Winton Rd South (Park)-2	5	FS, WQ, CP	3	10
O1	Bioretention	21	Winton on ramp to I-590 (East side)	4	I, WQ, SC	2	10
O2	Bioretention	22	Winton on ramp to I-590 (West side)	4	I, WQ, SC	2	10
D1	Dry Pond	23	Behind 32 Running Creek Circle	3	I, FS, WQ	3	10
D12	Dry Pond	24	289 Tumbleweed Drive	3	I, FS, WQ, CP	3	10
D14	Dry Pond	25	3100 Winton Rd South	3	I, FS, WQ	3	10
O11	ICR	26	1900 S. Clinton Ave.	3	I, AB, WQ, SC	2	10
O13	ICR	27	Corner Jefferson and E Henrietta	3	I, AB, WQ, SC	2	10
O14	ICR	28	2559 E. Henrietta Rd	3	I, AB, WQ, SC	2	10



**Table 2. Allen Creek Main Branch Retrofit Ranking List**

Map I.D.	Project Type	Overall Rank	Project Location	Feasability	Watershed Benefits	Cost Effectiveness	Score
O9	ICR	29	1350 Jefferson Rd (Harris Corp.)	3	I, WQ, CP, SC	2	10
W19	Wet Pond	30	New London Rd - Henrietta	3	I, FS, WQ	3	10
P4	New Pond	31	End of Karenlee Drive	2	I, FS, WQ, CP	3	10
W7	Wet Pond	32	Schilling Lane - Brighton	5	WQ	3	9
W15	Wet Pond	33	Jefferson to I-390 on ramp (behind 1175 Jefferson)	4	FS, CP	3	9
W4	Wet Pond	34	I-590 to SB I-390 (Fed. WL)	4	FS, CP	3	9
W5	Wet Pond	35	B/w I-390 N and I-390 S (Fed. WL)	4	S, WQ	3	9
W6	Wet Pond	36	B/w I-590 and I-390 on/off ramp to I-590 (Fed. WL)	4	S, WQ	3	9
O10	ICR	37	3450 Winton Place	3	I, WQ, SC	2	9
O12	ICR	38	1225 Jefferson Rd	3	I, WQ, SC	2	9
O6	Bioretention	39	1335 Jefferson Road	3	I, WQ, SC	2	9
O7	Bioretention	40	1400 Jefferson Rd (Harris Corp.)	3	I, WQ, SC	2	9
W12	Wet Pond	41	33 Eaglewood Circle	3	FS, WQ, CP	3	9
W24	Wet Pond	42	1300 Jefferson Road	3	FS, WQ, CP	3	9
D11	Dry Pond	43	Monroe Ave near I-590 East bound ramp	2	I, FS, WQ	3	9
O4	Bioretention	44	1205 Jefferson Road	3	FS, WQ, SC	2	8
O5	Bioretention	45	1215 Jefferson Road	3	FS, WQ, SC	2	8
O8	Bioretention	46	1225 Jefferson Rd	3	FS, WQ, SC	2	8
W11	Wet Pond	47	3559 Winton Place	3	FS, WQ	3	8
W21	Wet Pond	48	790 Jefferson Rd	3	FS, WQ	3	8
W25	Wet Pond	49	150 Jarley Road	3	FS, WQ	3	8
N1	Neighborhood	50	Suburban Heights	2	WQ, CR, E, SC	2	8
N10	Neighborhood	51	Warren Park	2	WQ, CR, E, SC	2	8
N11	Neighborhood	52	Glen Acre Heights	2	WQ, CR, E, SC	2	8
N12	Neighborhood	53	Southview Estates	2	WQ, CR, E, SC	2	8
N2	Neighborhood	54	Trout Spring Farm	2	WQ, CR, E, SC	2	8
N3	Neighborhood	55	Royal Meadow	2	WQ, CR, E, SC	2	8

**Table 2. Allen Creek Main Branch Retrofit Ranking List**

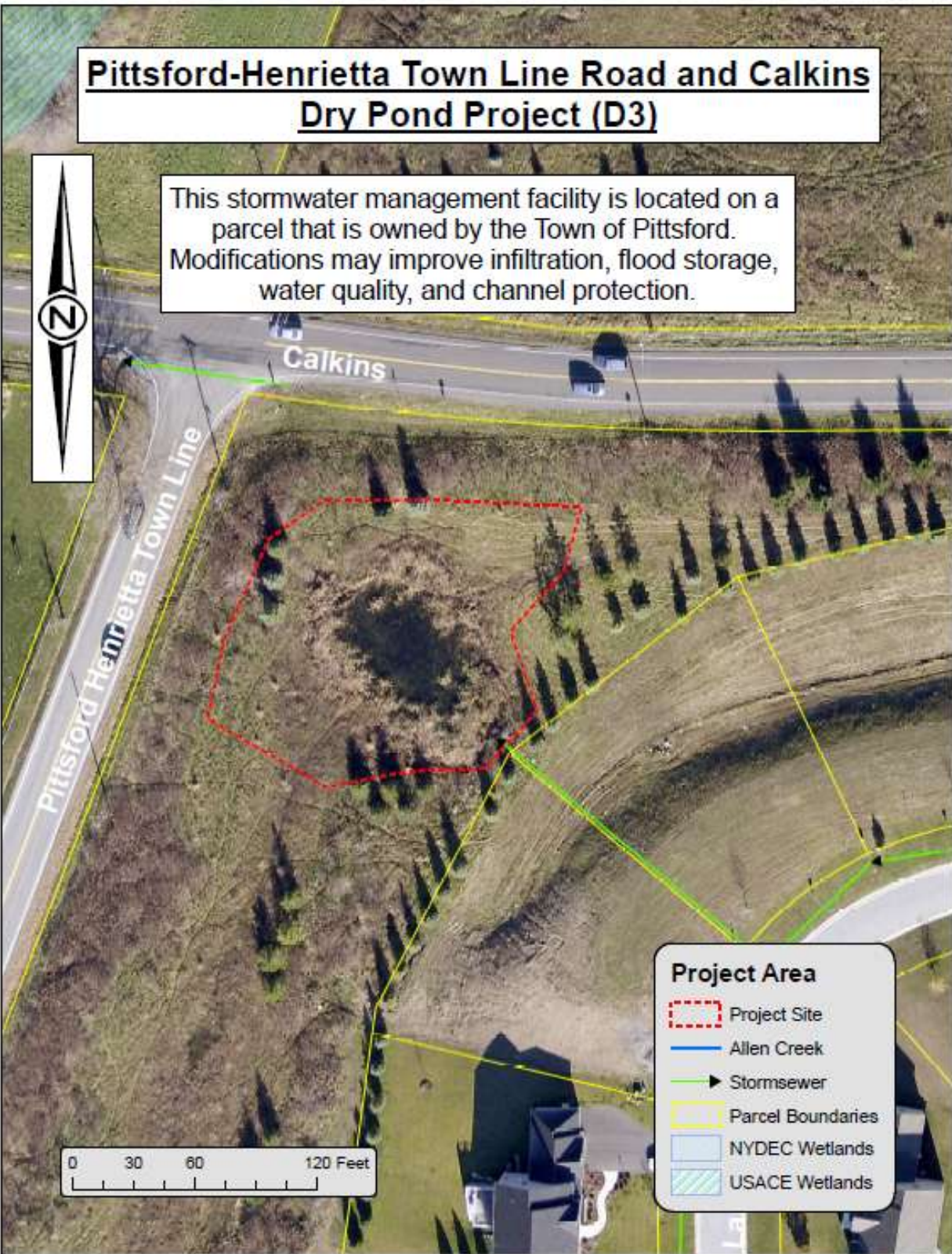
Map I.D.	Project Type	Overall Rank	Project Location	Feasibility	Watershed Benefits	Cost Effectiveness	Score
N4	Neighborhood	56	Pinnacle Heights	2	WQ, CR, E, SC	2	8
N5	Neighborhood	57	Indian Hills	2	WQ, CR, E, SC	2	8
N6	Neighborhood	58	Lamplighter Colony	2	WQ, CR, E, SC	2	8
N7	Neighborhood	59	Locust Hill View	2	WQ, CR, E, SC	2	8
N8	Neighborhood	60	Alaimo Park	2	WQ, CR, E, SC	2	8
N9	Neighborhood	61	Evans Farm	2	WQ, CR, E, SC	2	8
W14	Wet Pond	62	1585 Calkins Road	3	S, WQ, E	3	7
O16	Zero Order	63	Behind 129 Blackwell Lane	2	I, SC	2	7
W10	Wet Pond	64	Woodbury Place (behind 25 Woodbury Place)	2	FS, WQ	3	7
W18	Wet Pond	65	1565 Jefferson Rd	2	FS, WQ	3	7
W23	Wet Pond	66	Surrey Hill Way	2	FS, WQ	3	7
W9	Wet Pond	67	West Jefferson Road (4 Hogan Court)	2	FS, WQ	3	7
O15	Zero Order	68	256-258 Reeves Road	1	I, AB, SC	2	7
O17	Zero Order	69	Across road from 1666 Winton Road S	1	I, CP, SC	2	7
W16	Wet Pond	70	Hillside Children's Center (behind 249 Parkmeadow)	0	S	3	4



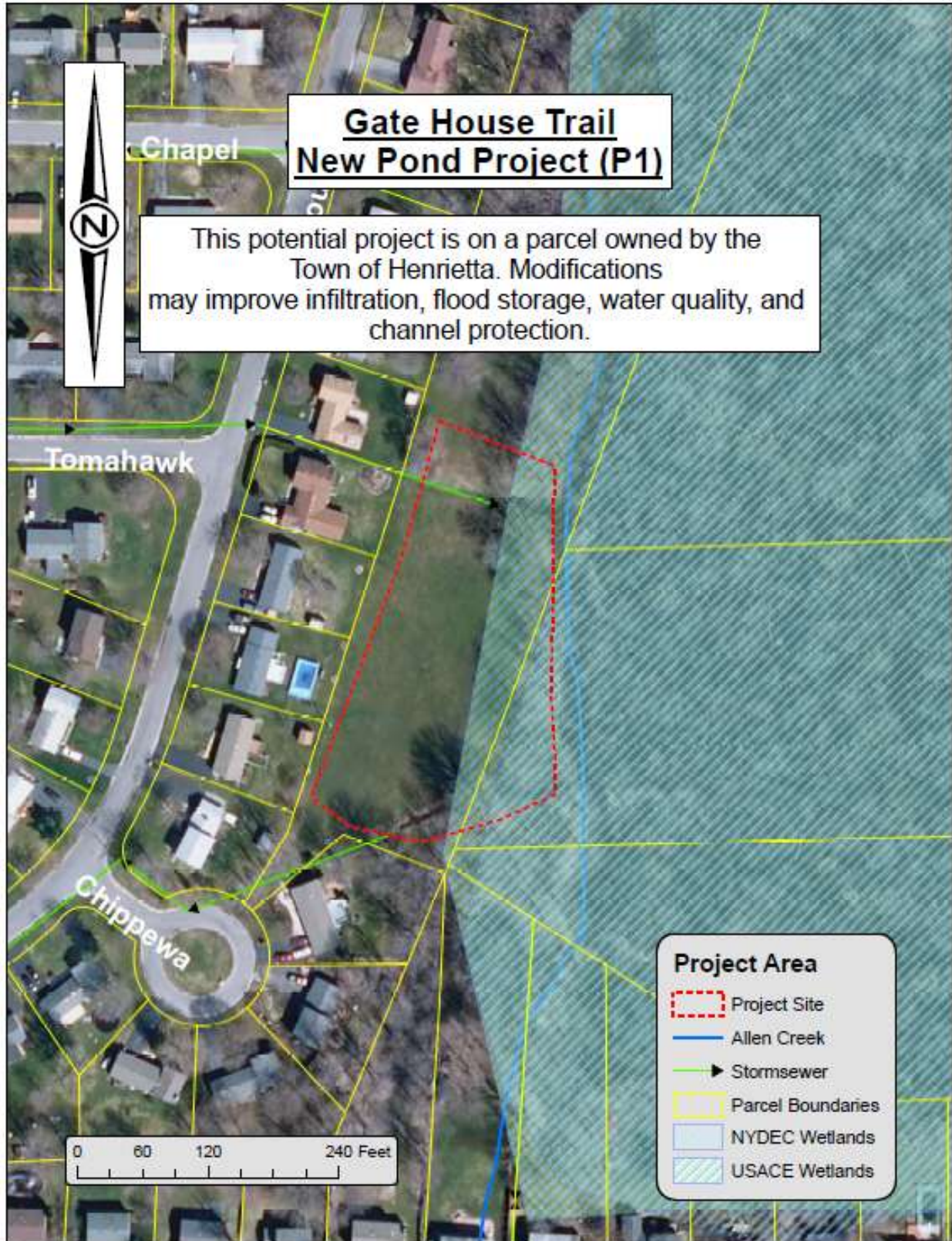


## Pittsford-Henrietta Town Line Road and Calkins Dry Pond Project (D3)

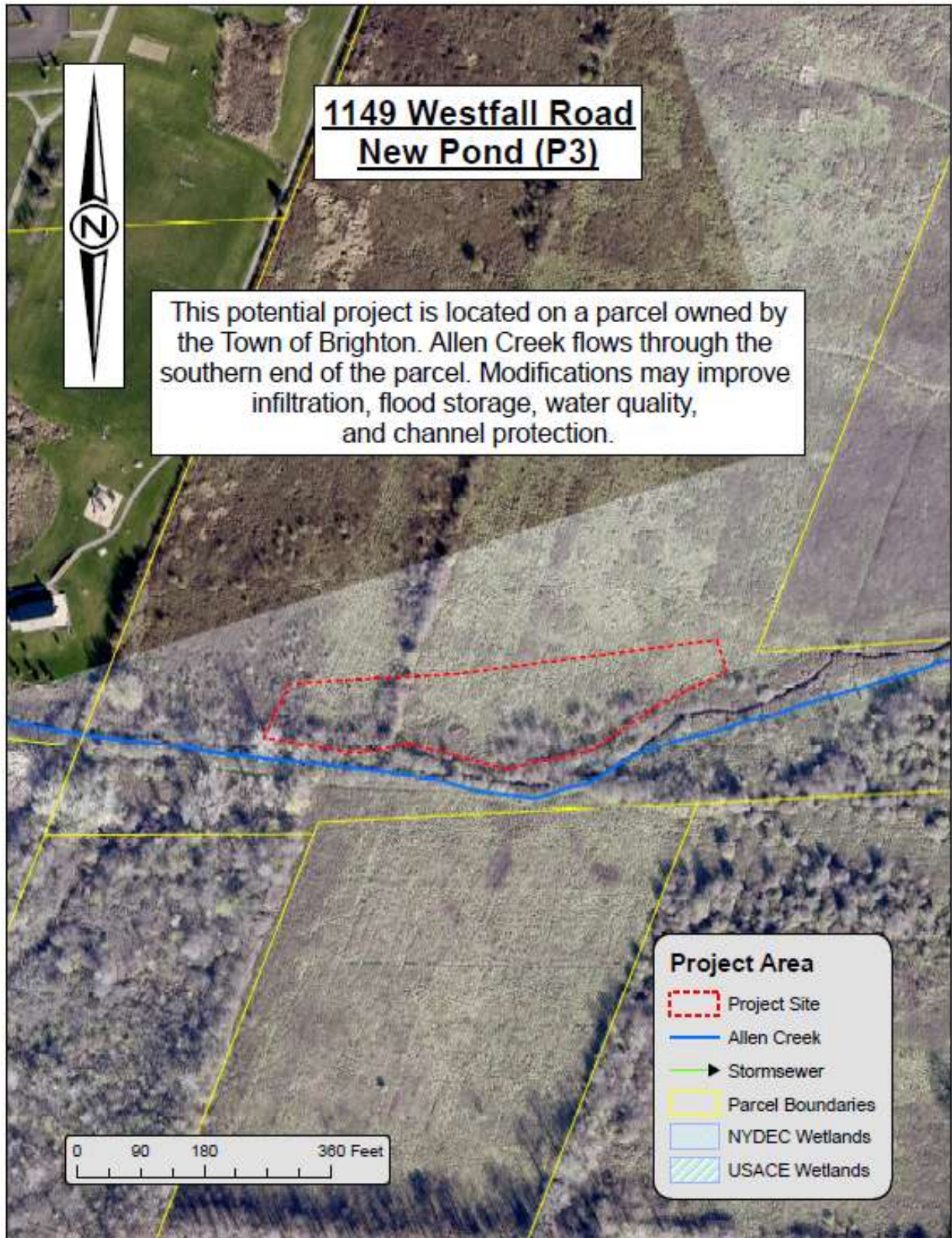
This stormwater management facility is located on a parcel that is owned by the Town of Pittsford. Modifications may improve infiltration, flood storage, water quality, and channel protection.







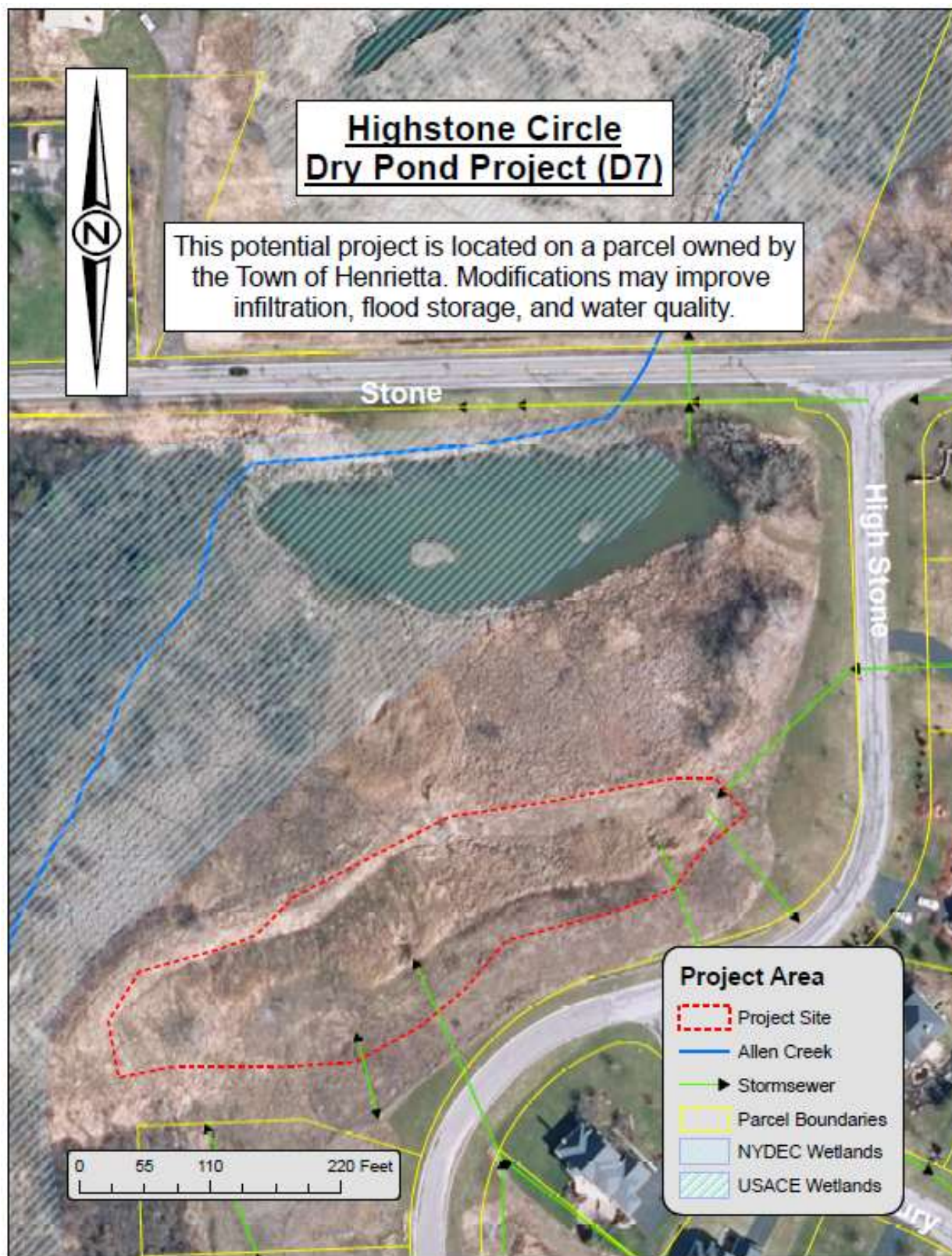




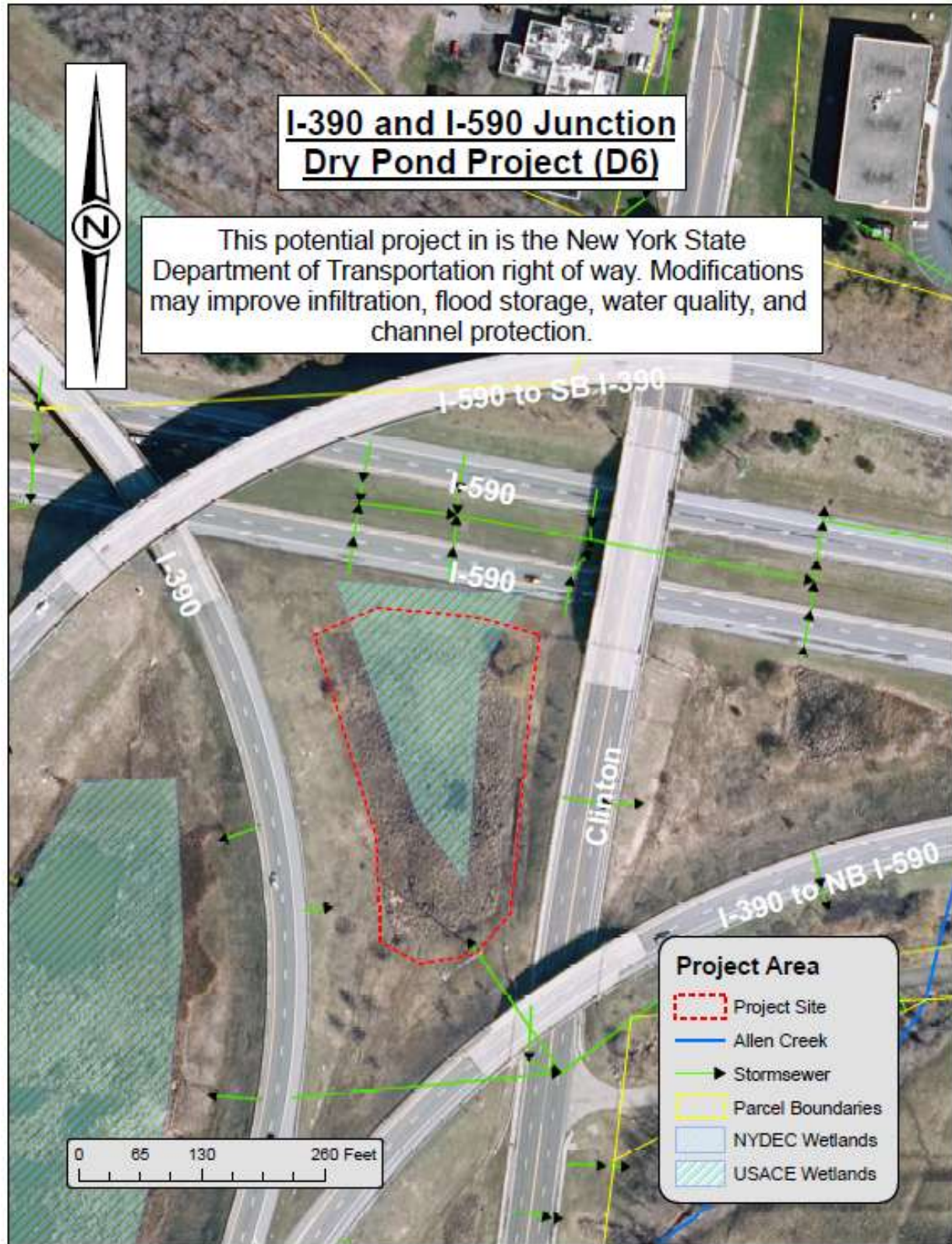




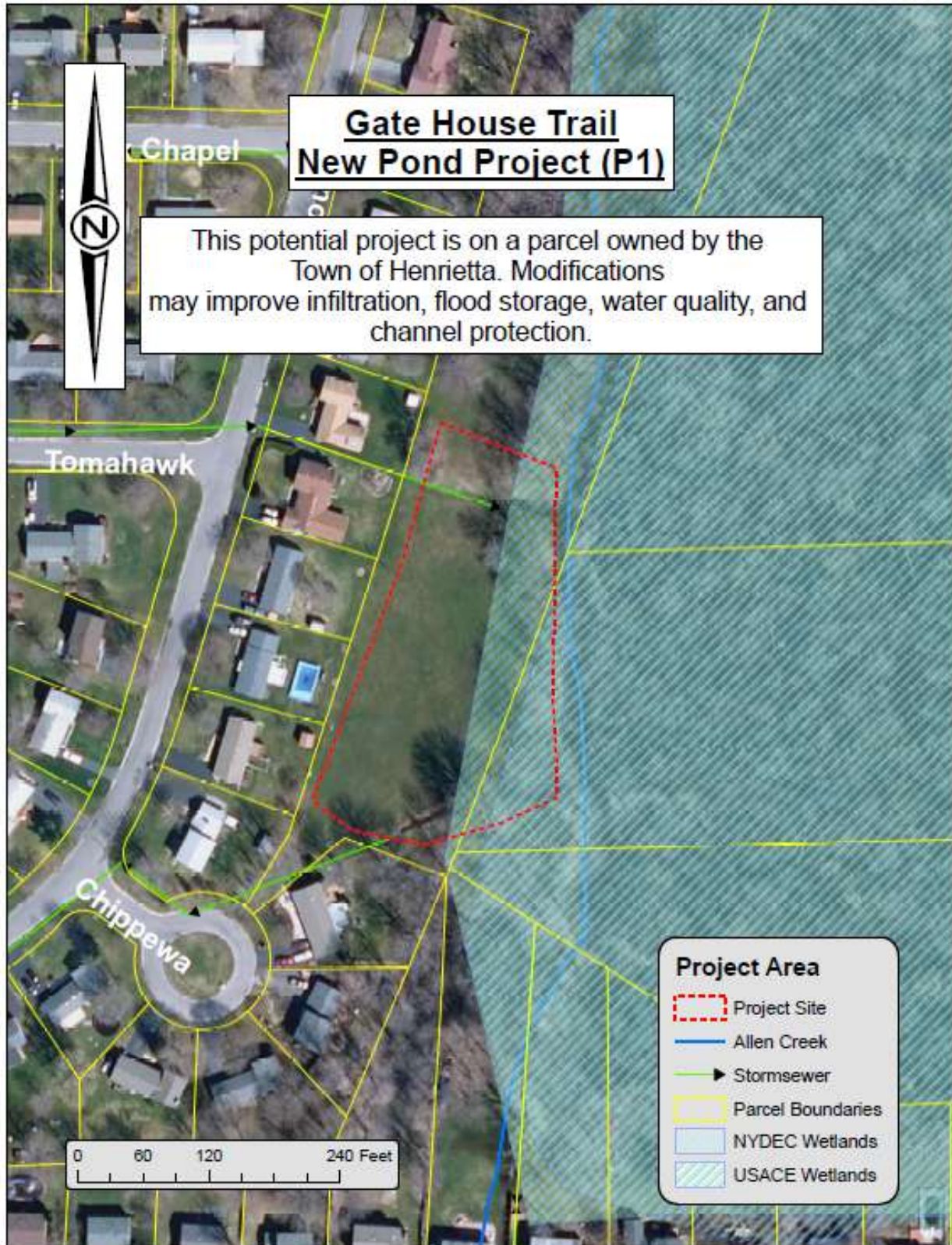




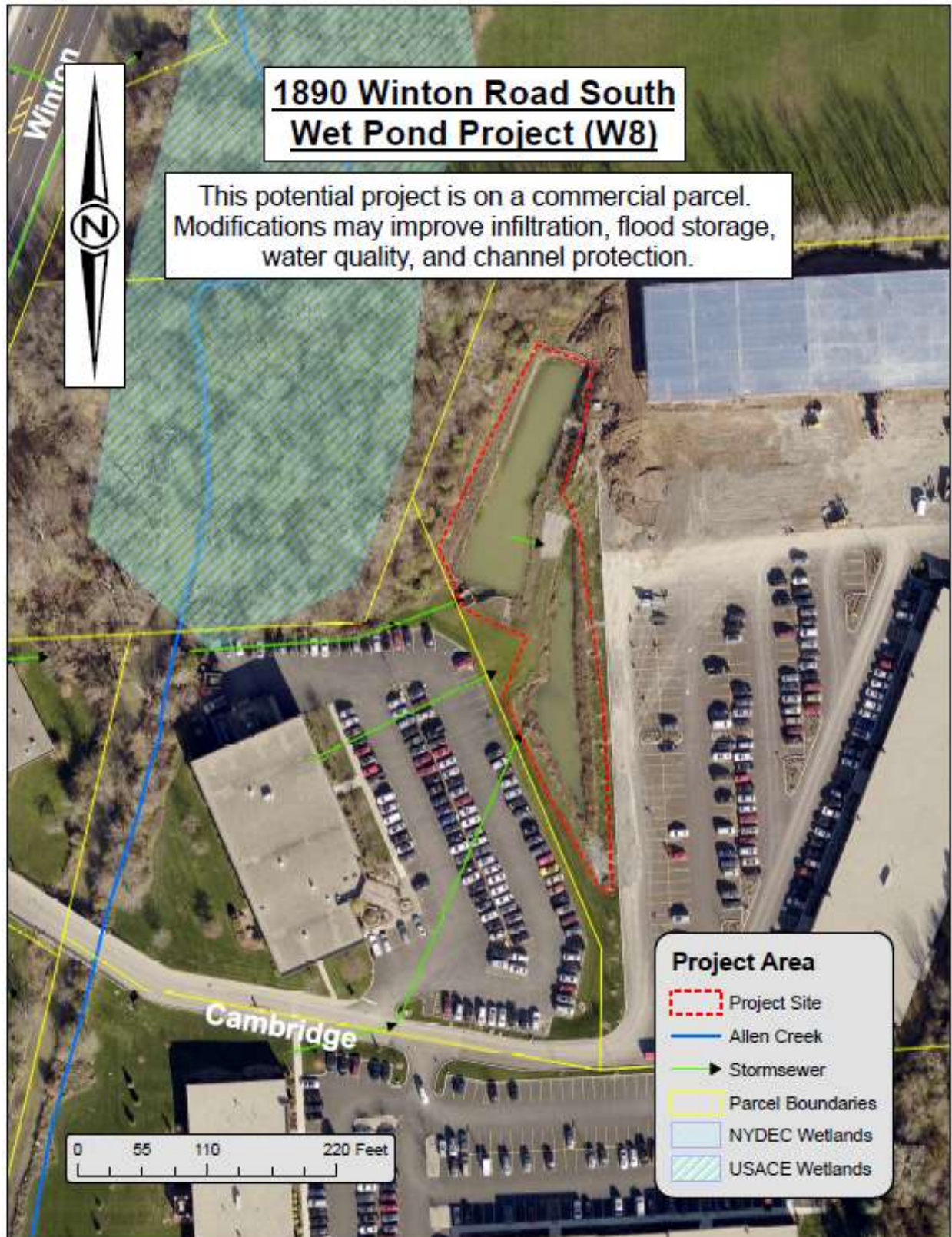




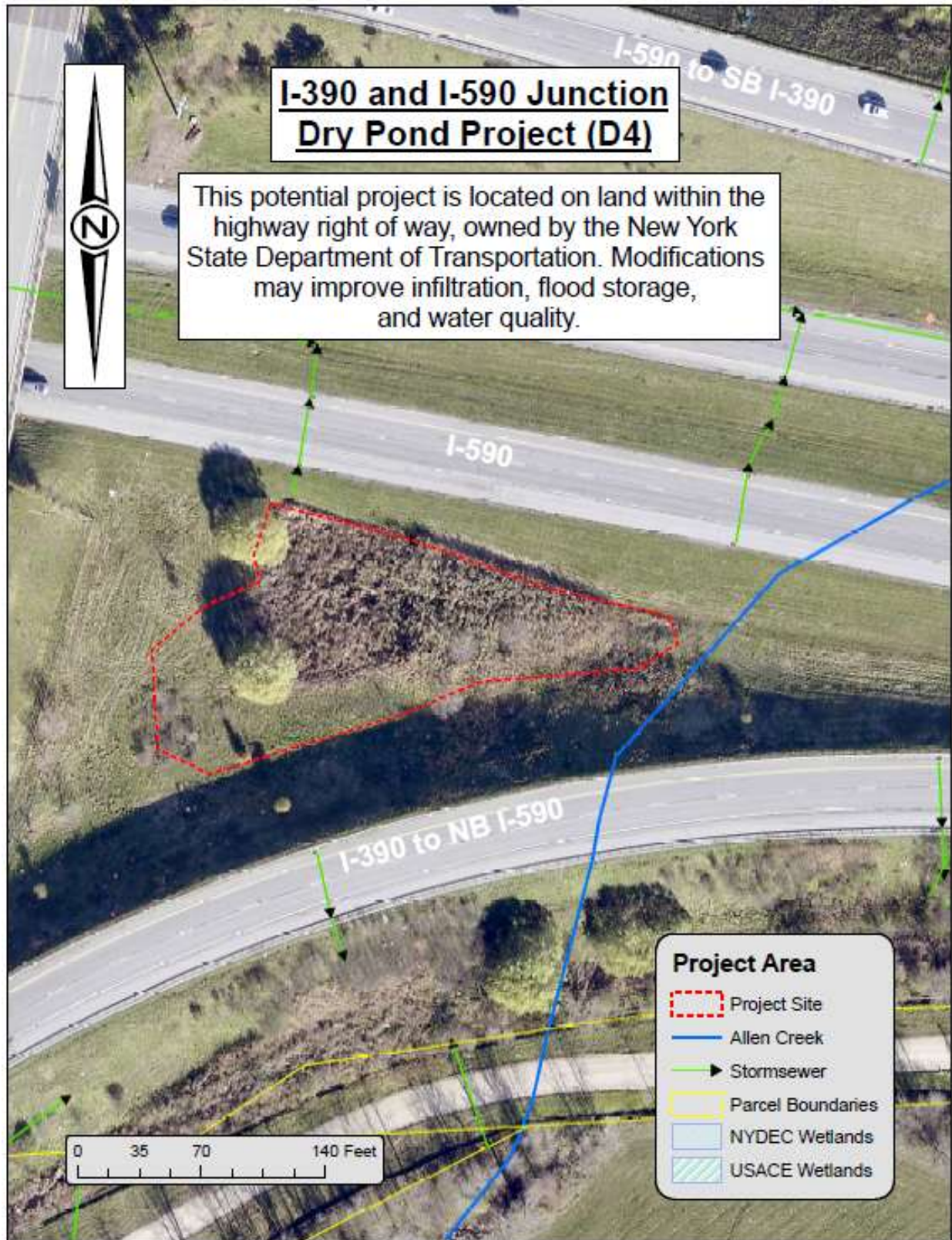




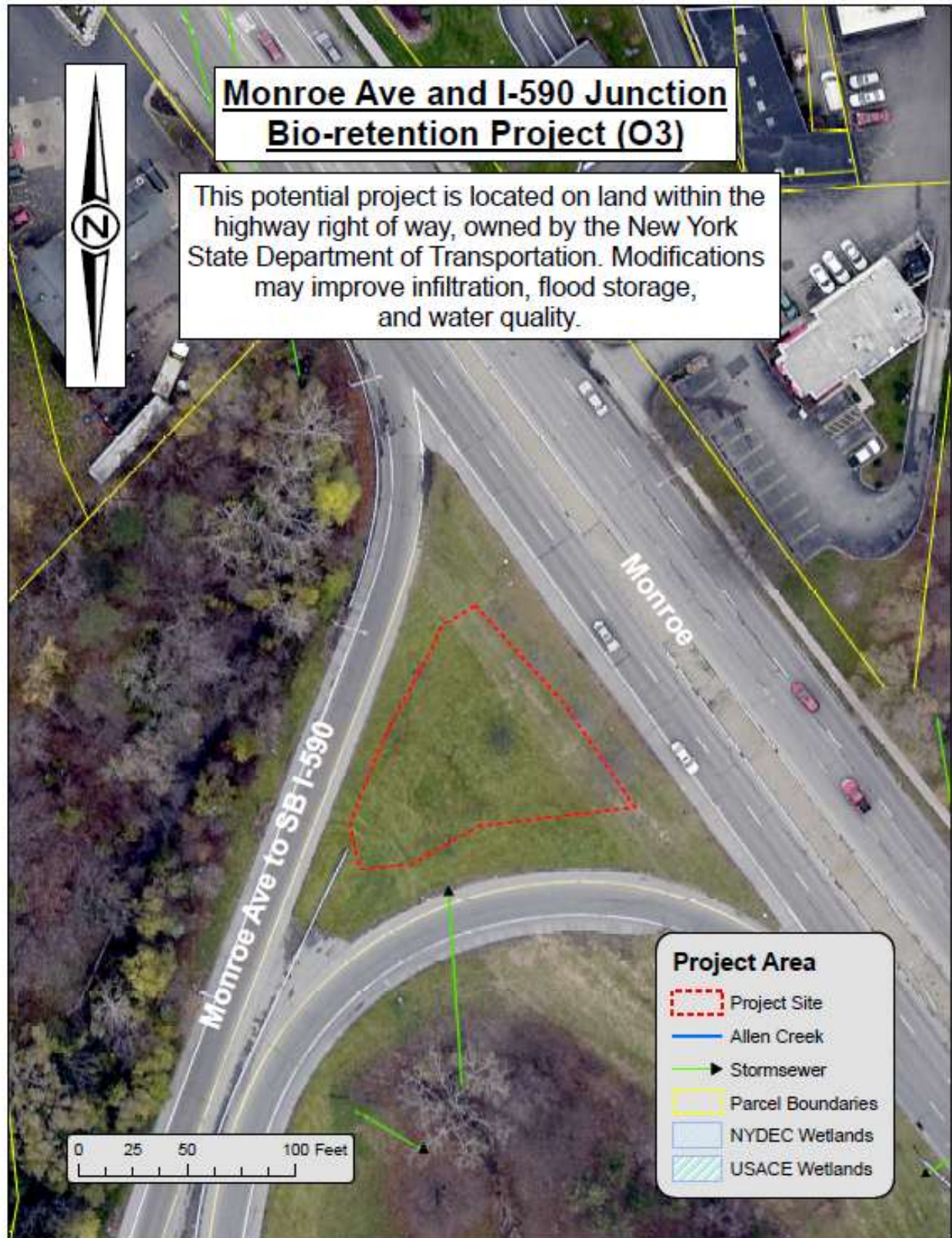




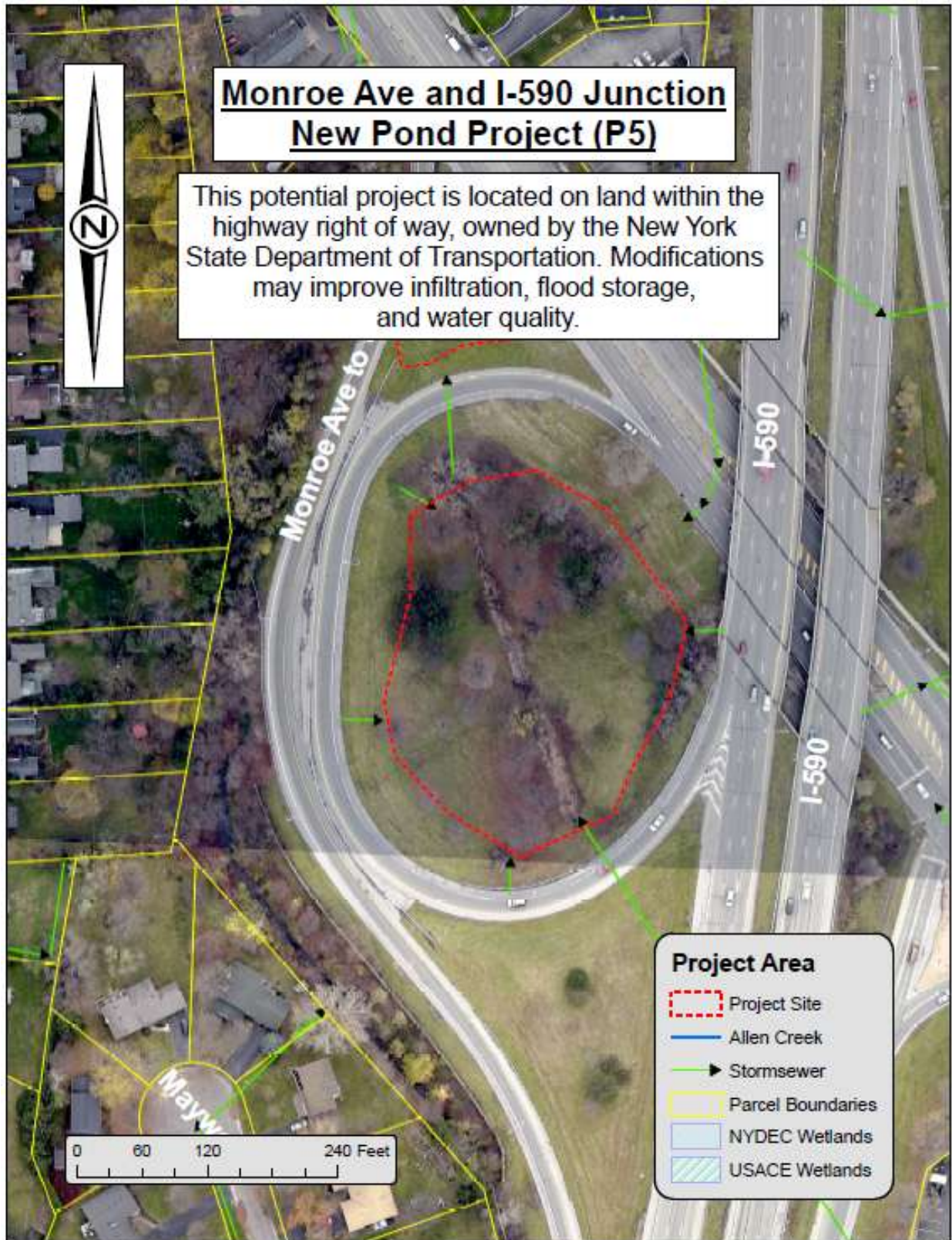




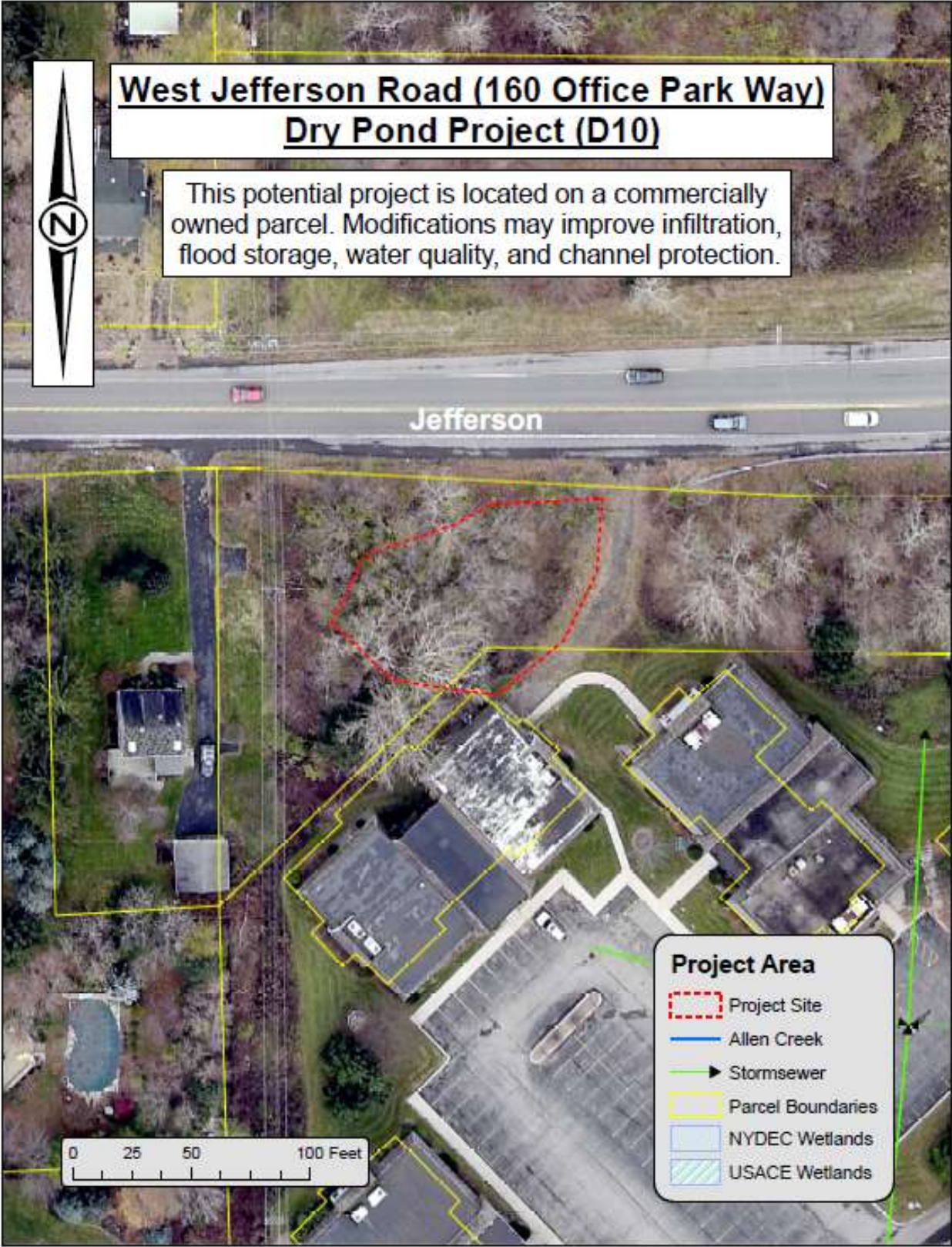




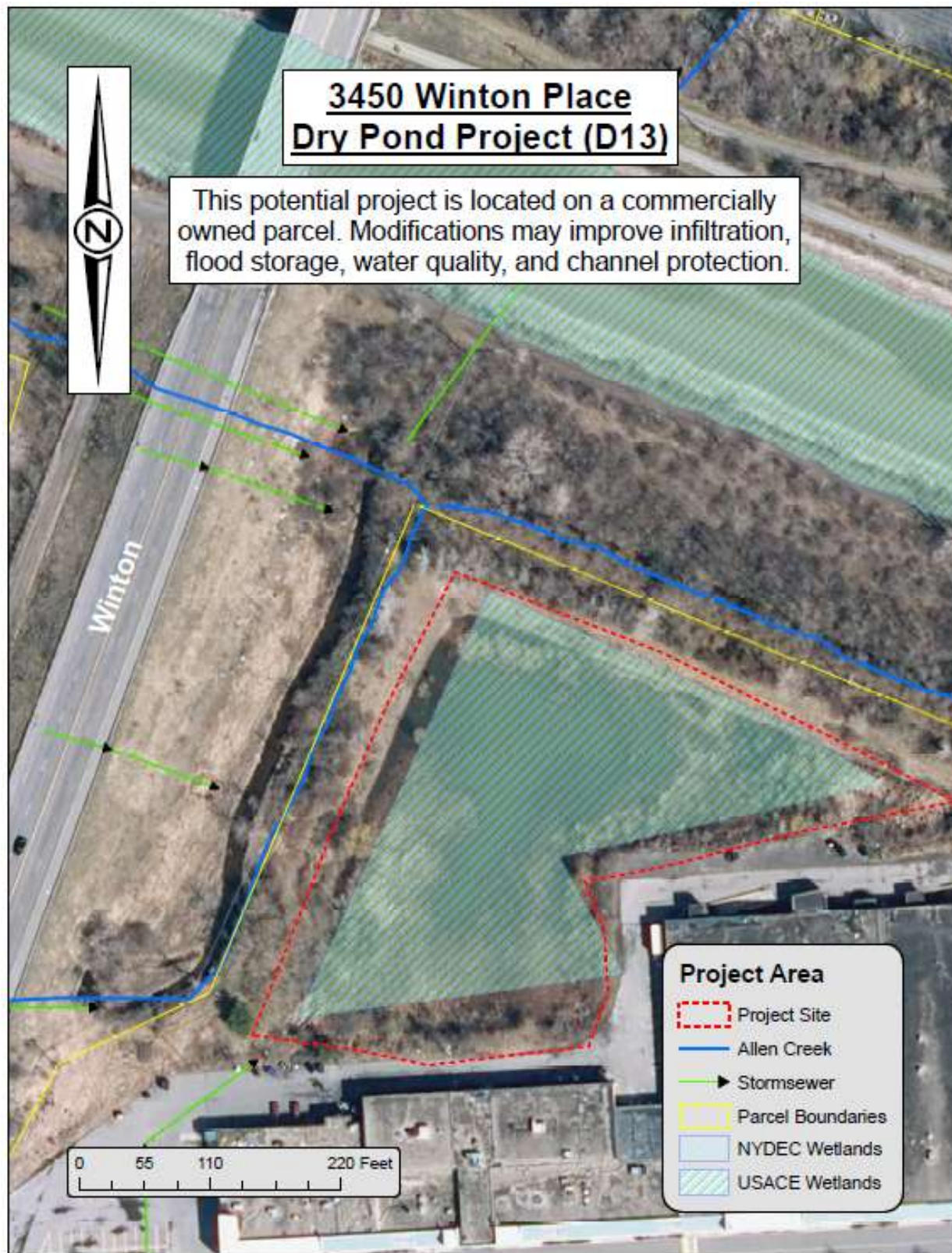




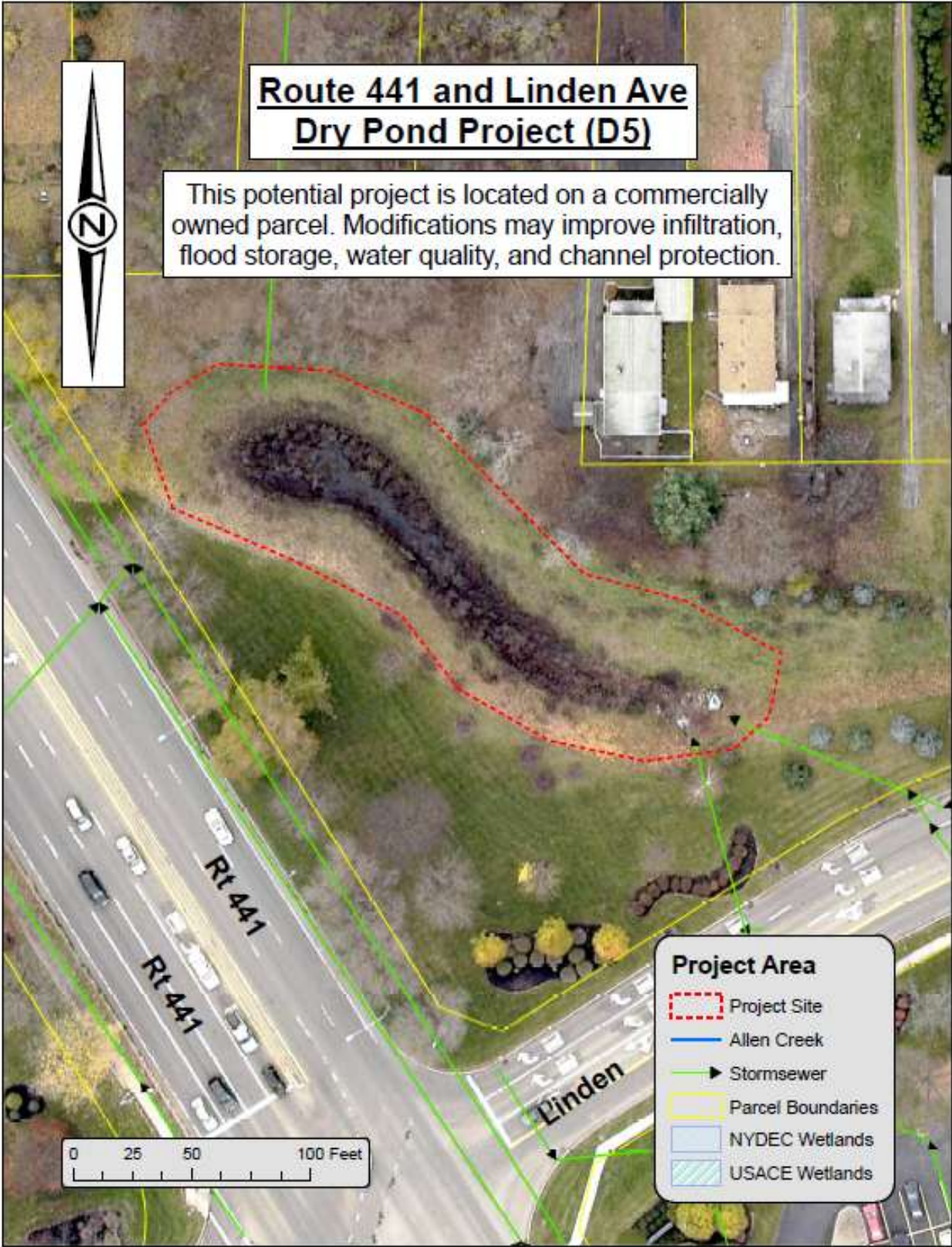




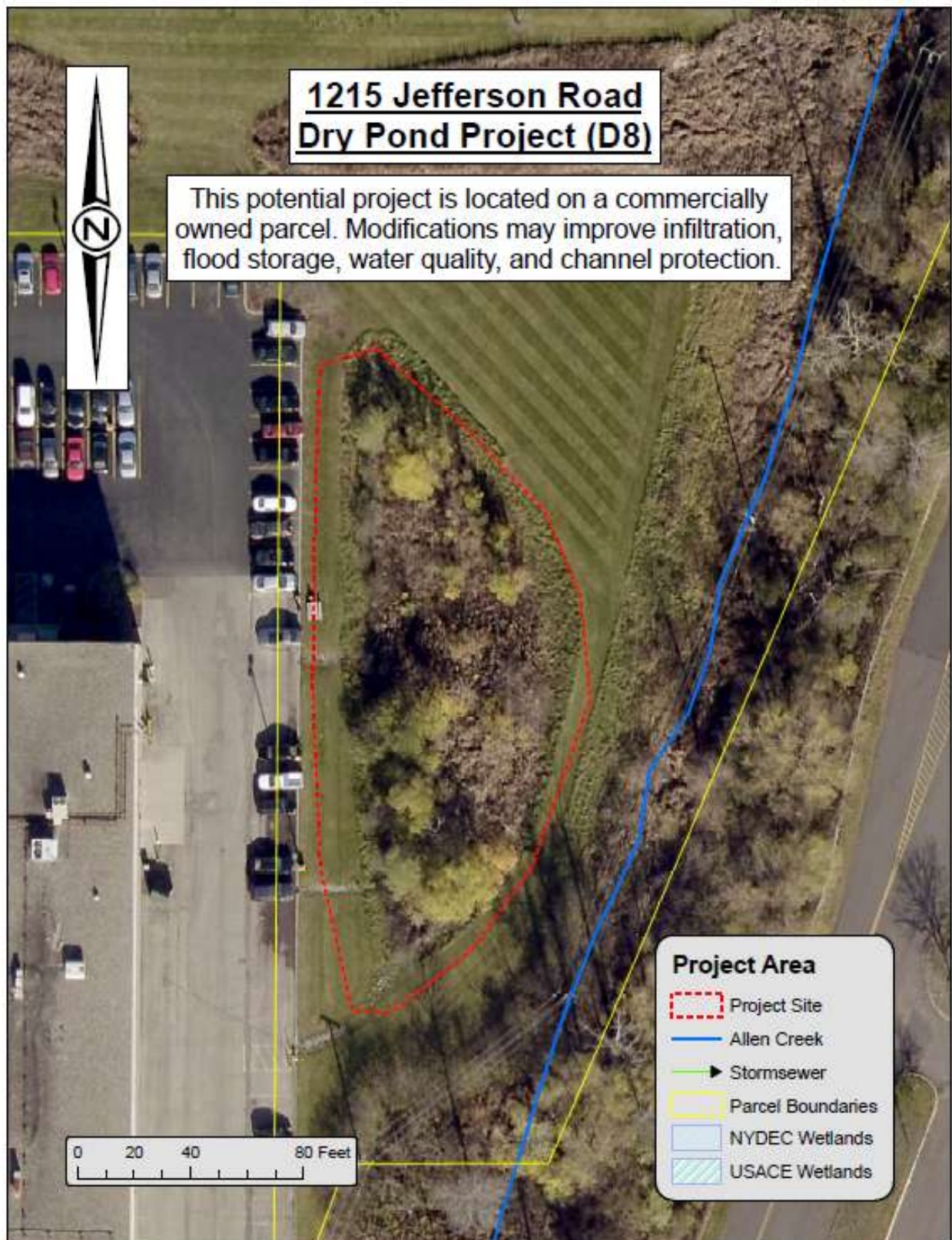




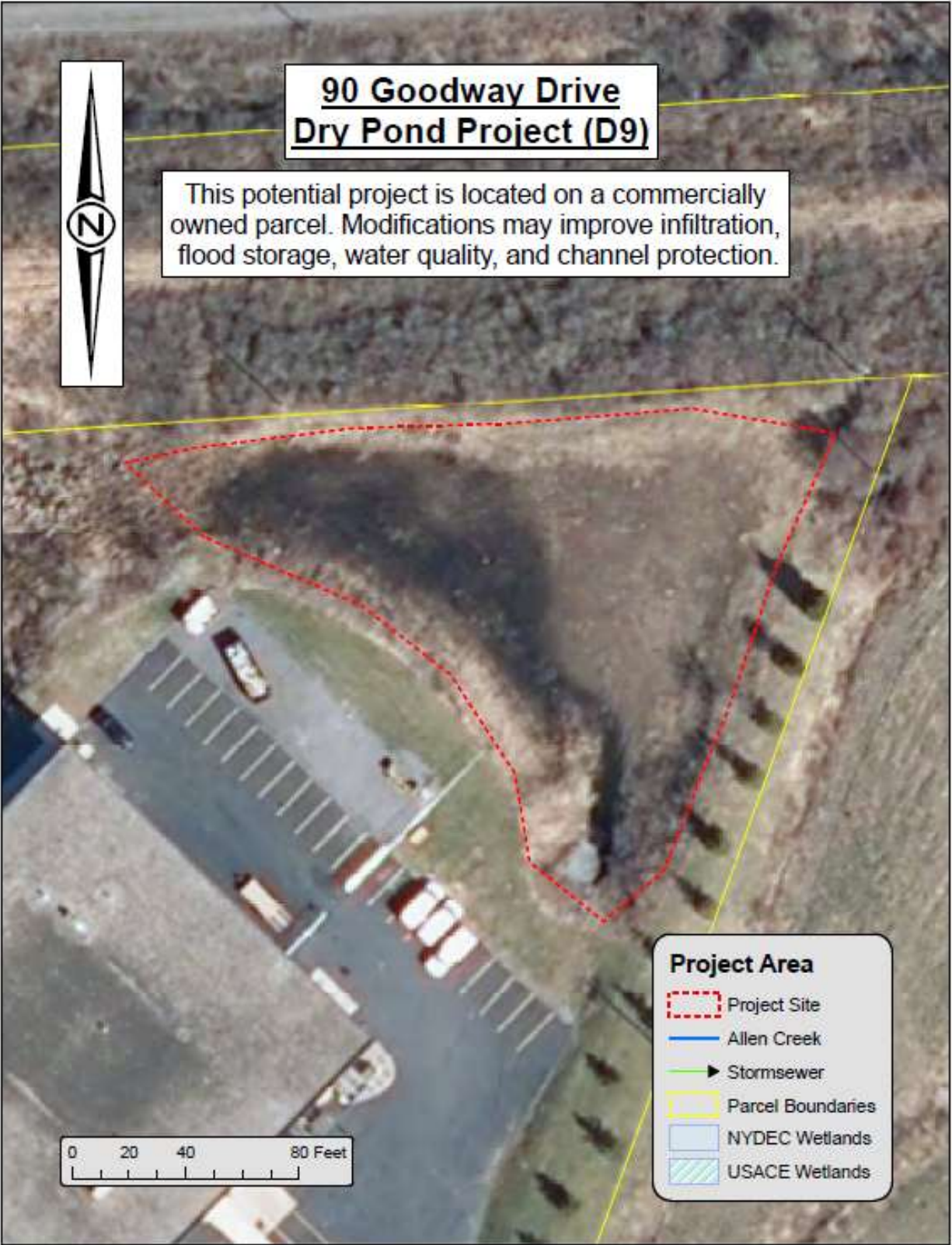




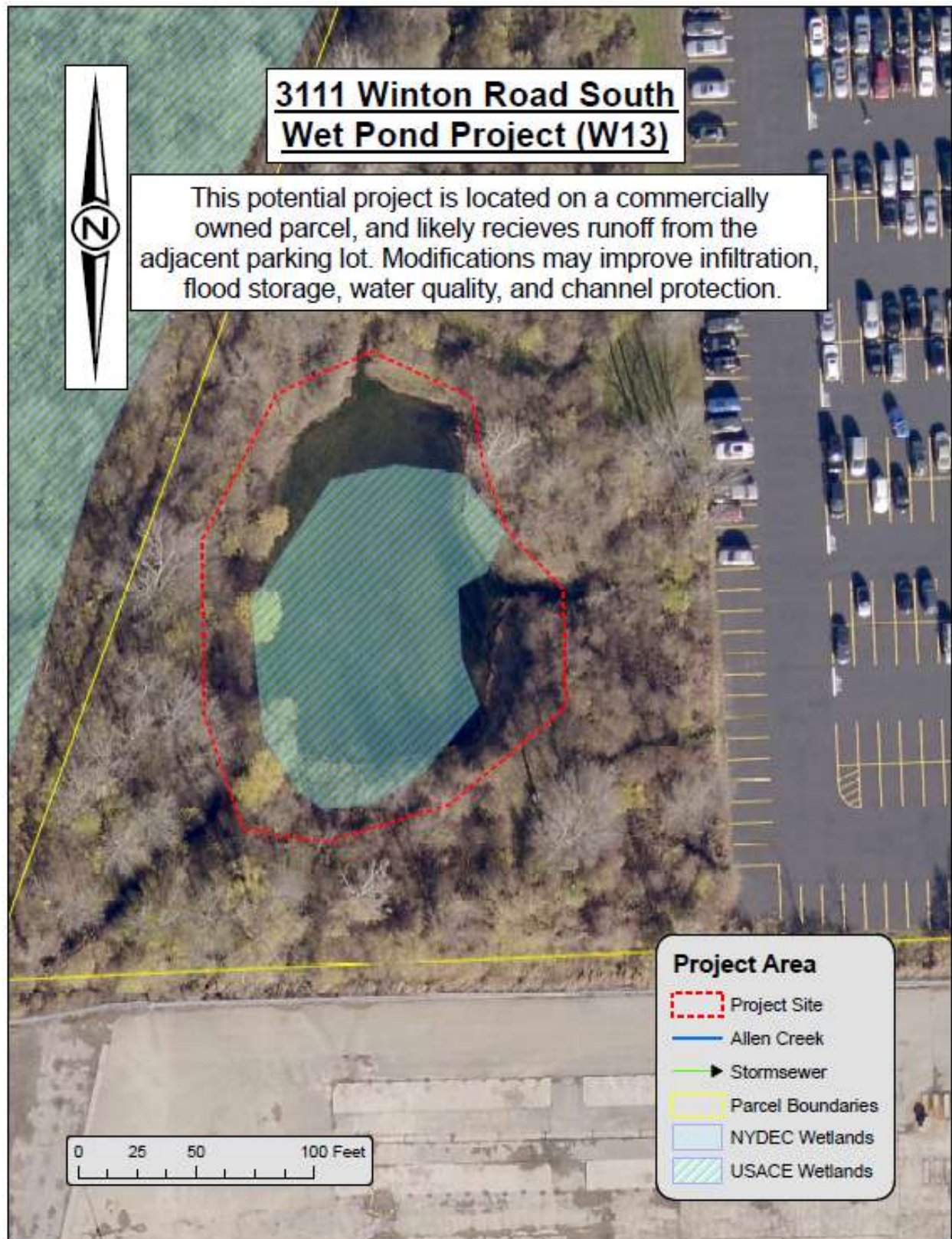




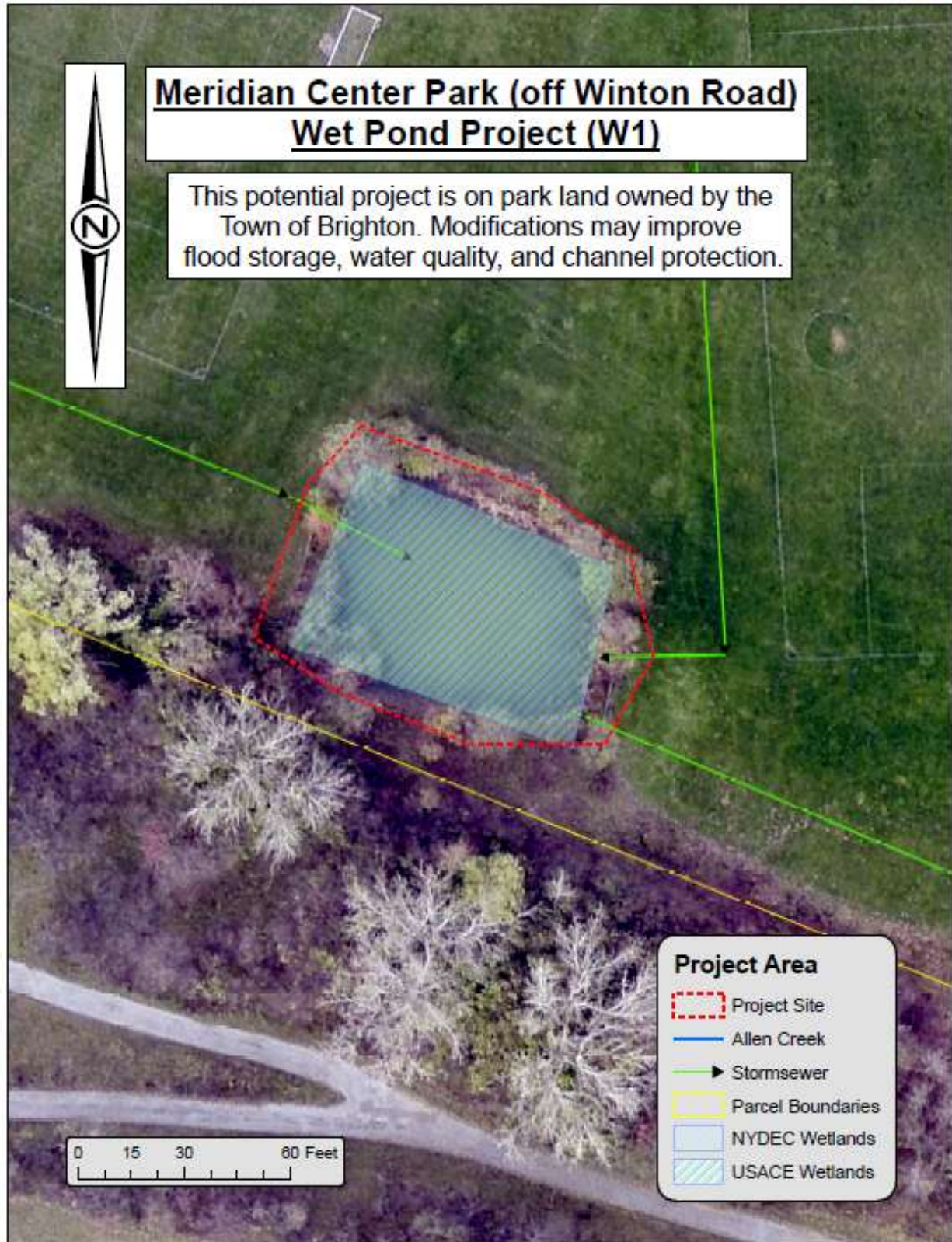


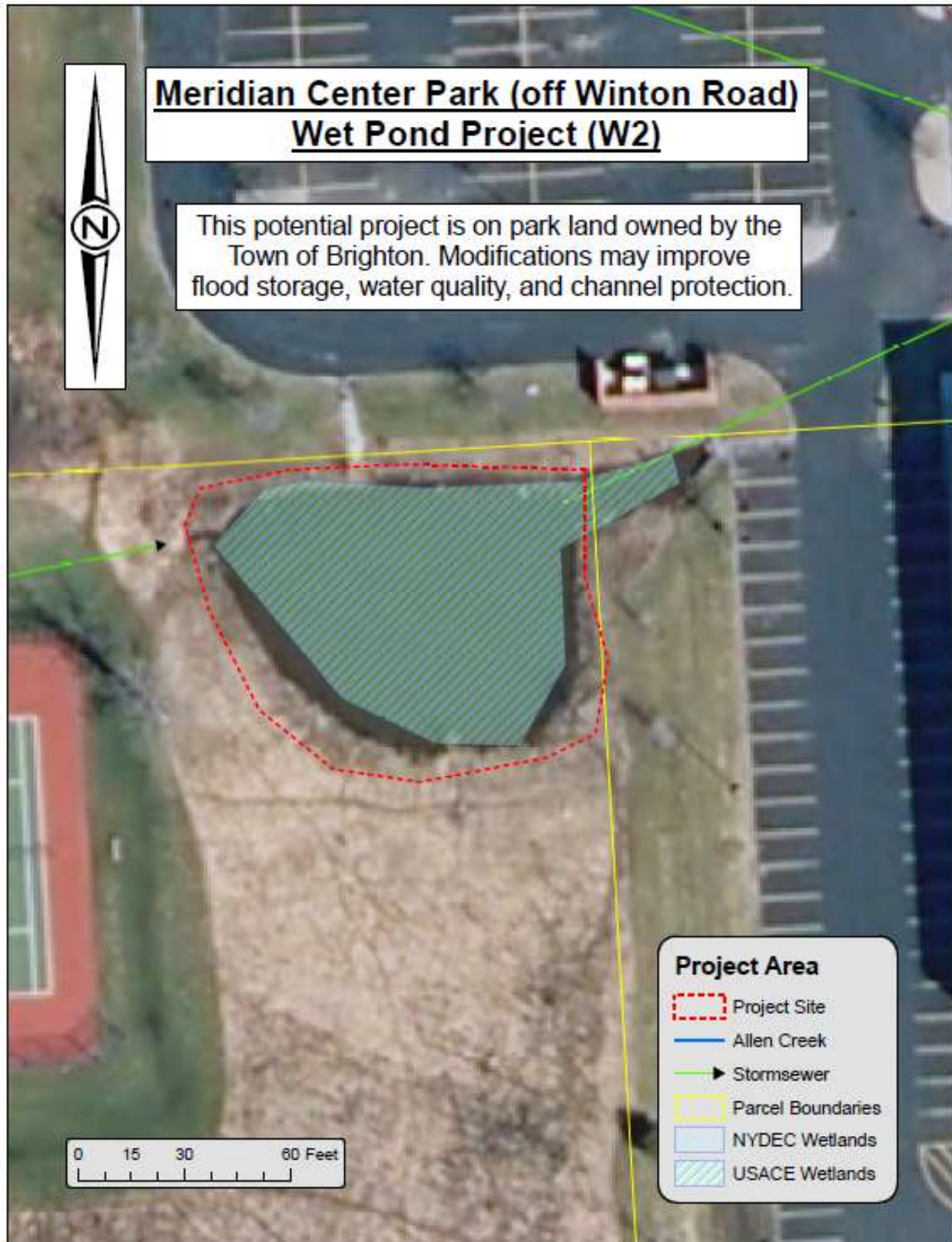




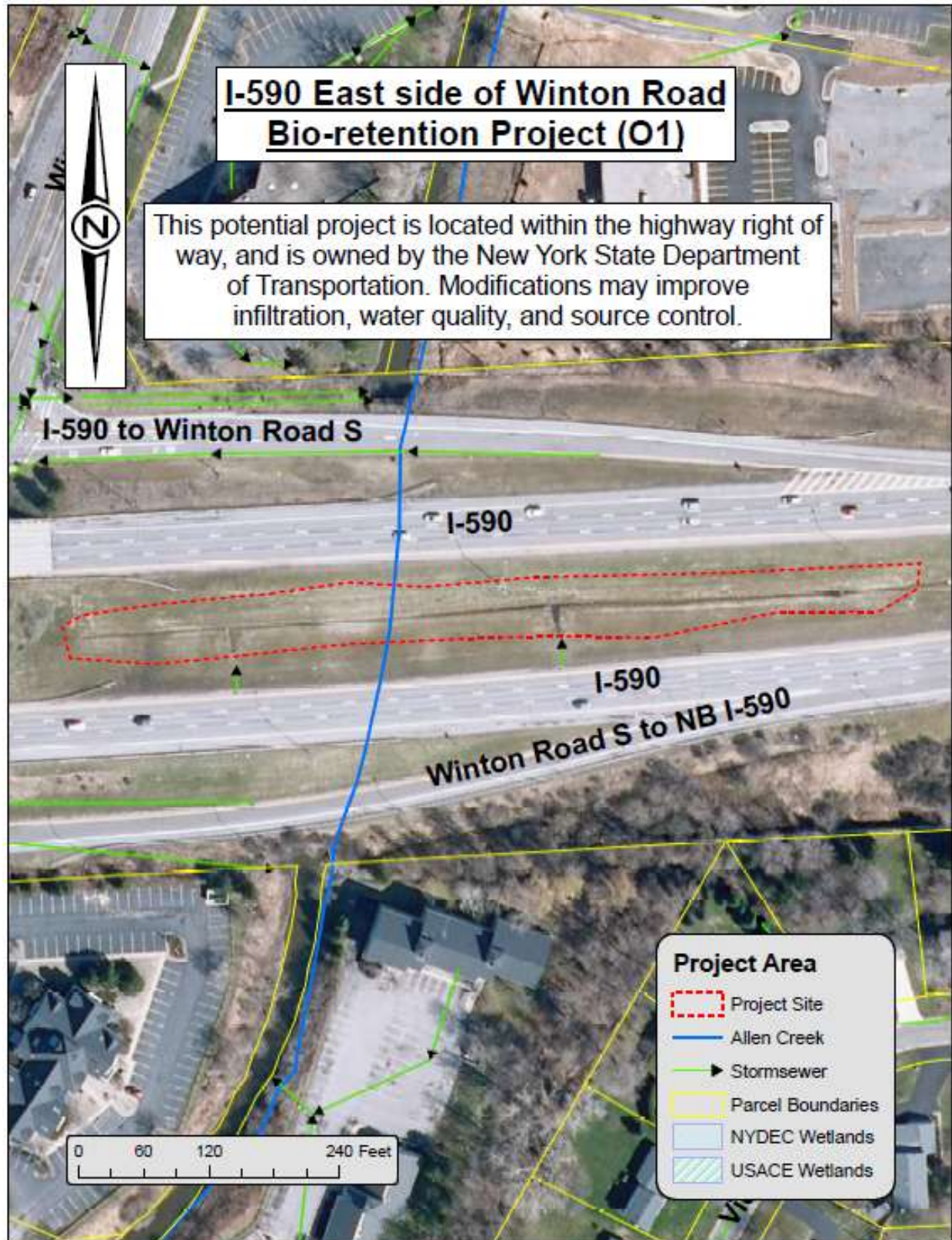




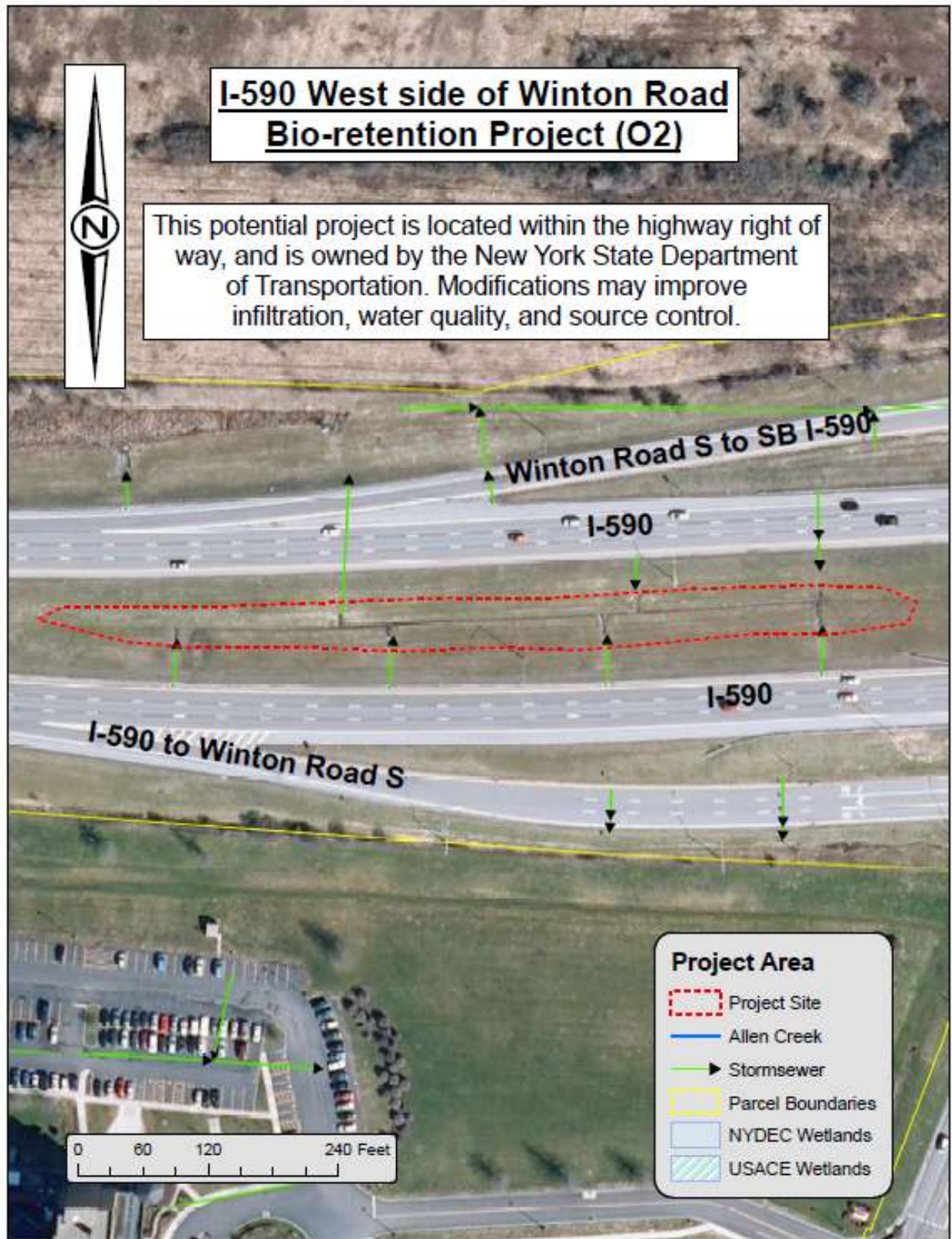








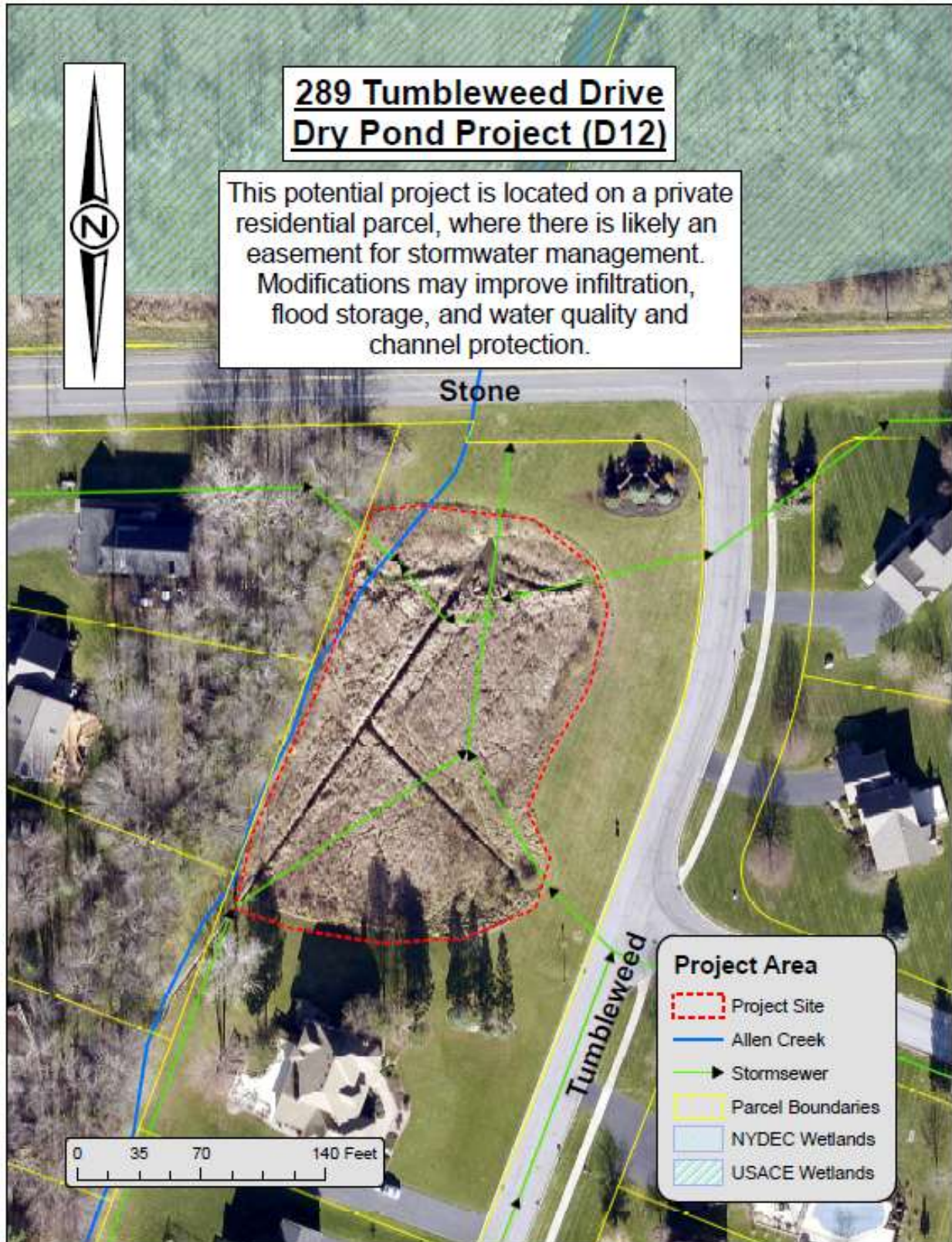














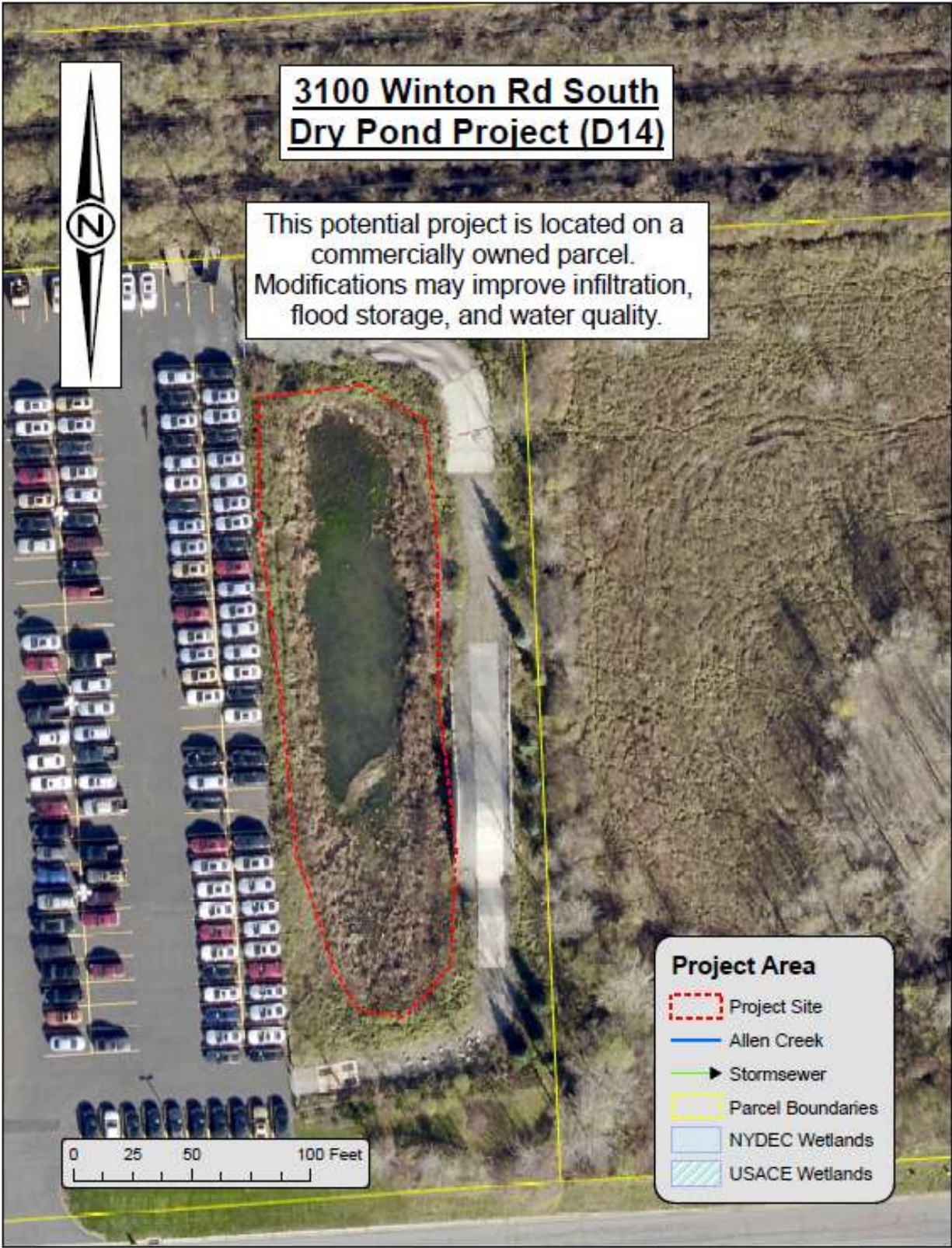




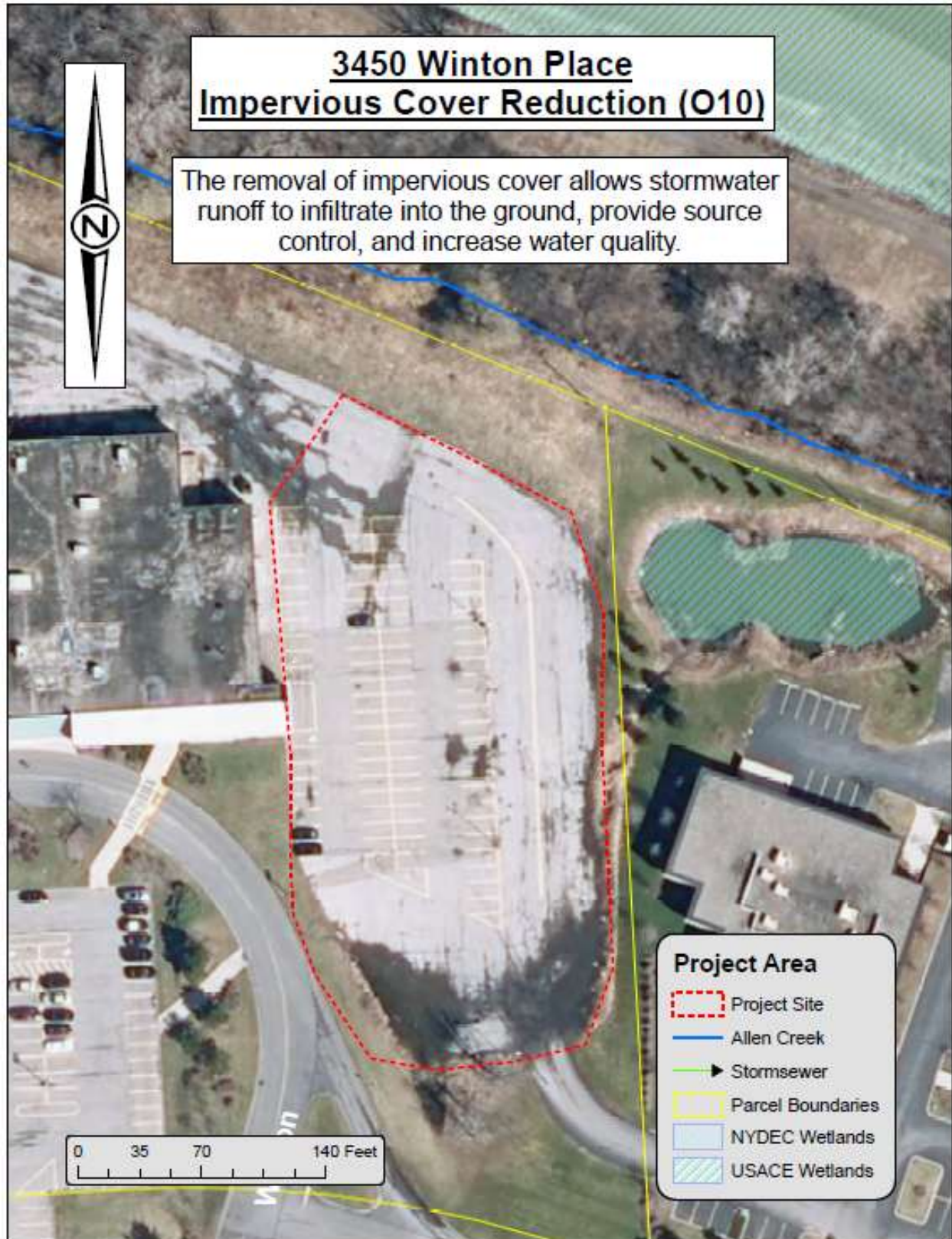


Figure 7: Above is an example typical residential street. Stormwater runoff is channeled into the concrete gutters along the sides of the road and conveyed to the stormwater sewer system through the storm inlets (red arrows). In order to reduce runoff into the stormwater sewer system and increase infiltration, bio-retention swales could be installed. These green infrastructure retrofits would replace the concrete gutter and contain stormwater runoff and allow it to infiltrate back into groundwater.



Figure 8: Above is a example of a neighborhood with standard stormwater management practices i.e. concrete gutters along the streets which connect to the stormwater sewer, fair amounts of impervious cover, and roof top connections to the stormwater sewer. Replacing the concrete gutter with bio-retention swales and diverting roof top runoff to rain gardens provide source control and infiltration for stormwater runoff.











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# APPENDIX A

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## Rapid Assessment Compiled Data



## Appendix A Data and Files Developed

### Allen Creek Main Branch Compiled Data

All file are located in the following directory if not otherwise stated: H:\IW\Stormwater\Asmnt\Allen Creek\Main Branch\Resource Directory

Item #	Description	File Name	Data Origin
<b>GIS Data</b>			
G1	Parcel data clipped to the extent of the watershed boundary	AllenCrMain_Parcels.shp	Monroe County
G2	Displays soil types and the drainage characteristics of the soils. An "A" soil has the highest drainage rate and "D" soils the lowest.	AllenCrMain_HydroSoils.shp	Monroe County
G3	Points show the location of all the new pond, pond retrofit, impervious cover, and storage projects.	Allen-CrMain_Project_Sites.shp	Monroe County
G4	Shapefile of the Allen Creek main branch watershed from the USGS StreamStats website. The boundary was reshaped to reflect the influence of stormwater and combined sewer system.	Allen-CrMain_Watershed_Boundary.shp	Originally from USGS StreamStats and then edited.
G5	An incomplete shapefile from the Town of Henrietta stormwater management facilities.	Allen-CrMain_Henrietta_SWMF.shp	Town of Henrietta
G6	A mostly complete shapefile from Town of Pittsford stormwater management facilities.	Allen-CrMain_Pittsford_SWMF.shp	Town of Pittsford
G7	Indicates the basic stream channel path through the watershed.	AllenCrMain_Streams.shp	Monroe County
G8	Indicates the basic stream channel path through the watershed.	Allen-CrMain_Middle_Streams.shp	Monroe County
<b>Maps</b>			
M1	A map of the watershed displaying the hydric soils pre-	AI-	Monroe County
M2	A map of the watershed displaying the different land	AI-	Monroe County

Item #	Description	File Name	Data Origin
<b>Retrofit Diagrams</b>			
RD1	Parcel is owned by the Town of Brighton and currently receives stormwater runoff from Heatherstone Lane. Site investigation shows that this a prime location for possible retrofit projects.	HeatherstoneDC.pdf	Monroe County
RD2	Site investigation revealed that the dry pond was filled with sediment and would be a prime location for retrofit.	High Stone Circle DC.pdf	Monroe County
RD3	One of the branches of Allens Creek flows through this parcel owned by the Town of Brighton. There is room to create a new pond on this parcel.	Johnsarbor off Elmwood NP.pdf	Monroe County
RD4	Parcel is owned by the Town of Brighton. A branch of Allens Creek runs through the south end of the parcel. There is a large area that is available for new pond construction.	1149 Westfall NP.pdf	Monroe County
RD5	Area receives stormwater via sewer system from a large parking lot and from road way.	Corner of Route 441 and Linden Ave DC.pdf	Monroe County
RD6	Bio-retention swales provide infiltration and stormwater storage for more localized sites, such as parking lots or individual buildings.	70 Ridgeland RD_ST.pdf	Monroe County
RD7	Bio-retention swales provide infiltration and stormwater storage for more localized sites, such as parking lots or individual buildings.	3100 East Ave_ST.pdf	Monroe County
RD8	Pond receives stormwater from the surrounding park. Room to increase pond size and flood storage.	Meridian Centre (Park) WC.pdf	Monroe County
RD9	Pond receives stormwater from the surrounding park. Room to increase pond size and flood storage.	Meridian Centre (Park) WC_2.pdf	Monroe County
RD10	Retention area receives stormwater from residential sub-division.	Rollins Xing DC.pdf	Monroe County
RD11	Town of Brighton owned pond that receives stormwater from Schilling Lane. Retrofit changes to the flow path of input stormwater would greatly improve water quality.	Schilling Lane WC.pdf	Monroe County
RD12	Project area within the following streets: Calkins, Pinnacle, Lehigh, Henrietta	Neighborhood GI Projects (N1).pdf	Monroe County
RD13	Project area within the following streets: Lehigh, Foxchapel, Blackwell, Roundhill, Pinnacle	Neighborhood GI Projects (N3).pdf	Monroe County

Item #	Description	Description	File Name
RD14	Project area within the following streets: Calkins, Pittsford Henrietta Town-line Rd, Lehigh, Pinnacle	Neighborhood GI Projects (N4).pdf	Monroe County
RD15	Project area within the following streets: Viennawood, Chadwick, Dunbarton	Neighborhood GI Projects (N6).pdf	Monroe County
RD16	Project area within the following streets: Edgewood, Warren, Hibiscus, Dunrovin	Neighborhood GI Projects (N7).pdf	Monroe County
RD17	Project area within the following streets: Westfall, Edgewood, Dartford, Hunters, Idlewood	Neighborhood GI Projects (N8).pdf	Monroe County
RD18	Project area within the following streets: Westfall, Willowbend, Willowcrest, Edgewood	Neighborhood GI Projects (N9).pdf	Monroe County
RD19	Project area within the following streets: Monroe, Edgewood, Westfall, Winton	Neighborhood GI Projects (N10).pdf	Monroe County
RD20	Project area within the following streets: Elmwood, Winton, Westfall	Neighborhood GI Projects (N11).pdf	Monroe County
RD21	This site is owned by the Town of Brighton and provides a large amount of area for pond construction along Allen Creek. A new pond could provide flood storage as well as water quality and channel protection down stream.	1435 Westfall Road NP.pdf	Monroe County
RD22	Dry pond stormwater management facilities are ideal retrofit projects. Dry pond conversions other increased flood storage and water quality as well as infiltration.	Bw I-390 to NB I-590 ramp and I-590 DC.pdf	Monroe County
RD23	This site is owned by the Town of Henrietta and would be good location for a possible new pond project. Allen Creek flows through the parcel and therefore a new pond could be constructed for flood storage.	End of Karenlee Drive NP.pdf	Monroe County
RD24	A new pond project in this location would provide stormwater retention and infiltration. The land is owned by the Town of Henrietta.	Gate House Trail NP.pdf	Monroe County
RD25	This site is in the highway right of way and serves as the outfall location for the stormwater system in the area. A pond in this location could retain stormwater and allow for infiltration.	I-590 and Monroe Ave Junction NP.pdf	Monroe County
RD26	An example neighborhood for curb removal, bio-swale installation and rain garden placement.	NeighborhoodGI_Area.jpg	Monroe County
RD27	An example neighborhood for curb removal and bio-swale installation.	NeighborhoodGI_Area2.jpg	Monroe County
<b>Documents</b>			
D1	A list of the streets that make up the boundaries for each of the neighborhood GI project areas.	Allen Creek Main Branch Neighborhood GI Practice Quads	Monroe County



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# APPENDIX B

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## NYSDEC PWL Datasheet

## Allen Creek and tribs (0302-0022)

## Minor Impacts

### Waterbody Location Information

Revised: 03/19/2002

<b>Water Index No:</b>	Ont 108/P113-3-8	<b>Drain Basin:</b>	Lake Ontario
<b>Hydro Unit Code:</b>	04140101/010	<b>Str Class:</b>	B
<b>Waterbody Type:</b>	River	<b>Reg/County:</b>	8/Monroe Co. (28)
<b>Waterbody Size:</b>	59.8 Miles	<b>Quad Map:</b>	ROCHESTER EAST (I-10-2)
<b>Seg Description:</b>	entire stream and tribs		

### Water Quality Problem/Issue Information (CAPS indicate MAJOR Use Impacts/Pollutants/Sources)

Use(s) Impacted	Severity	Problem Documentation
Public Bathing	Stressed	Suspected
Aquatic Life	Stressed	Known
Recreation	Stressed	Known

#### Type of Pollutant(s)

Known: NUTRIENTS  
Suspected: Salts, Silt/Sediment  
Possible: Pathogens

#### Source(s) of Pollutant(s)

Known: URBAN/STORM RUNOFF, Construction, Other Sanitary Disch  
Suspected: Agriculture, Deicing (stor/appl), Streambank Erosion  
Possible: ---

### Resolution/Management Information

<b>Issue Resolvability:</b>	1 (Needs Verification/Study (see STATUS))	
<b>Verification Status:</b>	4 (Source Identified, Strategy Needed)	
<b>Lead Agency/Office:</b>	ext/WQCC	<b>Resolution Potential:</b> Medium
<b>TMDL/303d Status:</b>	n/a	

### Further Details

Aquatic life support, public bathing and various recreational uses (fishing, boating, etc) in Allen Creek are affected by impacts from various urban/stormwater sources and other nonpoint sources in the watershed.

A biological (macroinvertebrate) assessment of Allen Creek near Penfield was conducted in 1999 and again in 2004. Field sampling results indicated slightly impacted water quality conditions in 1999. The field assessment was verified by laboratory-sorting of the sample to order level. In 2004 the stream was found to have been significantly altered - perhaps relocated - due to construction in the area. Moderate impacts were indicated, but these results may have been influenced by habitat conditions. Additional monitoring to verify the impacts is recommended. A 1998 assessment conducted by Dr. William Sutton in cooperation with NYSDEC found slight to moderate impacts. Both assessments indicate the presence of nutrient enrichment in the stream. (DEC/DOW, BWAM/SBU, January 2001)

Urban and stormwater runoff related to the high degree of impervious surface area (shopping plazas, parking lots, roadways, etc) has been identified as the primary source of nutrients and other pollutants (pathogens, oil and grease,

floatables) to the creek. A significant portion of one tributary (Buckland Creek) is enclosed and serves primarily as a storm sewer for Elmwood Avenue. Agricultural activities in the upper watershed, impacts from failing and/or inadequate on-site septic systems, tributary stream erosion and residential and commercial development throughout the watershed are also thought to contribute to nutrient and silt/sediment loadings. (Monroe County WQCC, May 2001)

Considerable bay and watershed water quality management and monitoring efforts are continuing. Municipalities within the watershed have formed the Irondequoit Watershed Collaborative. IWC activities have focused on comprehensive stormwater management efforts and (with USGS) hydrologic modeling to predict the impact of land use changes. Efforts within Monroe County include the establishment of a collaborative to assist with the implementation of phase II stormwater regulations. The Monroe County WQCC has evaluated road salt use and conducted a residential lawn care education project. A town highway facility is the focus of a pollutant removal demonstration project being conducted with NYS DEC funding. (Monroe County WQCC, May 2001)

The Monroe County Environmental Health Laboratory has maintained a cooperative monitoring program with USGS which grew out of a Nationwide Urban Runoff Program effort on Irondequoit Basin in 1980s. Subsequent USGS reports on water quality in the basin have been published in 1996, 1997 and 1999. (Monroe County Environmental Health Laboratory, May 2001)

This segment includes the entire stream and all tribs. The waters of the stream are primarily Class B, B(T); the upper reaches are Class C. Tribs to this reach/segment, including West Brook (-1), are Class B, B(TS) and C. (May 2001)



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## APPENDIX C

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### **Potential Stormwater Hotspots in the Allen Creek Main Branch Watershed**

Stormwater hotspots are defined as commercial, municipal, industrial, institutional or transport related operations that produce higher levels of stormwater pollutants, and may present a higher than normal risk for spills, leaks, or illicit discharges. In many cases, a hotspot exists on private property where a change in how the facility is managed is all that is required to prevent water pollution. Pollution prevention is a term commonly used for hotspots and refers to reducing or eliminating the generation of pollutants where they are generated. Another term used is “good housekeeping”, meaning a practical and cost-effective way to maintain a clean and orderly facility, in order to prevent potential pollution sources from coming into contact with stormwater. Good housekeeping practices also help to enhance safety and improve the overall work environment. An example in Allen Creek is the Concrete Batch Plant that is adjacent to the creek. The plants operation involves sand that is stored in the open for easy access (Figure C-1).

Using the watershed parcel records and the parcel property class description, potential hotspots were identified, mapped and listed (Figure C-2 and Table C-1 respectively).

Property uses include trucking, gas stations, auto washing, storage, repair and recyclers, minimarts, and fast food restaurants.



Figure C-1: A concrete plant is a potential

Pollution prevention methods will vary greatly depending on the type of facility, but could include better handling of automotive fluids at an auto recycling yard or installing a canopy over a gas station's fueling island. The goal is to have the facility owners implement site specific practices to treat the quality of runoff from all severe stormwater hotspots using existing authority under industrial and/or municipal stormwater permits, since hotspot runoff may violate water quality standards and warrants abatement.

When funding becomes available, the sites listed need to be visited and evaluated by technical staff in order to a) determine if and how stormwater pollutants are being generated and exported from the site and, b) from the site evaluation, define the specific needed retrofit project.

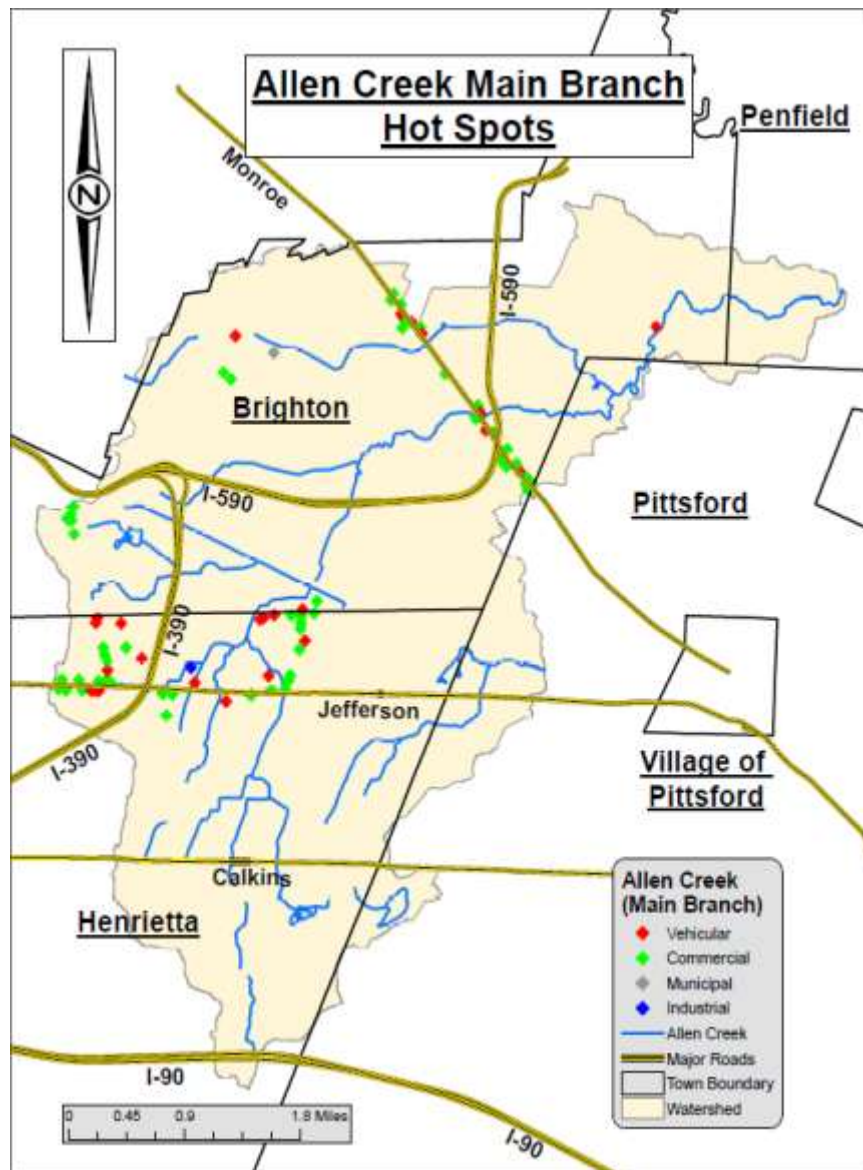


Figure C-2: Locations for potential hotspot within the Allen Creek



<b>Table C-1. List of Potential Hotspot Locations - Allen Creek main branch watershed</b>		
<b>Location</b>	<b>Property Class</b>	<b>Property Description</b>
1760 MONROE AVE	421	Restaurant
1205 JEFFERSON ROAD	421	Restaurant
945 JEFFERSON ROAD	421	Restaurant
2735 MONROE AVE	421	Restaurant
2185 MONROE AVE	421	Restaurant
869 E HENRIETTA ROAD	421	Restaurant
1690 MONROE AVE	421	Restaurant
749 E HENRIETTA ROAD	421	Restaurant
2717 MONROE AVE	421	Restaurant
3020 WINTON ROAD S	421	Restaurant
3423 WINTON PL	421	Restaurant
2600 ELMWOOD AVE	421	Restaurant
2740 MONROE AVE	421	Restaurant
2430 MONROE AVE	421	Restaurant
3010 WINTON ROAD S	421	Restaurant
3110 WINTON ROAD S	421	Restaurant
125 WHITE SPRUCE BLVD	421	Restaurant
942 JEFFERSON ROAD	421	Restaurant
2775 MONROE AVE	421	Restaurant
935 JEFFERSON ROAD	421	Restaurant
2450 MONROE AVE	421	Restaurant
780 JEFFERSON ROAD	421	Restaurant
2800 MONROE AVE	421	Restaurant
1175 JEFFERSON ROAD	421	Restaurant
245 CLAY ROAD	421	Restaurant
830 JEFFERSON ROAD	421	Restaurant
1890 S CLINTON AVE	421	Restaurant
950 JEFFERSON ROAD	426	Fast food
1580 JEFFERSON ROAD	426	Fast food
2545 MONROE AVE	426	Fast food
2951 MONROE AVE	426	Fast food
3050 WINTON ROAD S	426	Fast food
2600 MONROE AVE	426	Fast food
955 JEFFERSON ROAD	430	Mtor veh srv
3100 WINTON ROAD S	431	Auto dealer
1803 MONROE AVE	432	Gas station
2852 MONROE AVE	432	Gas station
1886 MONROE AVE	432	Gas station
2555 MONROE AVE	432	Gas station
2500 WINTON ROAD S	432	Gas station
3108 EAST AVE	432	Gas station
1677 ELMWOOD AVE	432	Gas station

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# APPENDIX D

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## **Potential Stream Repair Projects in the Allen Creek Main Branch Watershed**

Stream Repairs include physical modifications to stream channels, banks, and in-stream habitat to repair and improve degraded or unstable conditions. The project objectives are to reduce streambank erosion, recover biological diversity of a naturalized stream, protect threatened infrastructure such as adjacent homes or roads, and to add community resources, aesthetics and recreation opportunities (Figure 1).

In 2000, the Monroe County Soil & Water Conservation District began a streambank and shoreline erosion assessment program (SEAP) to inventory, assess, and prioritize erosion sites with the expertise of SUNY Geneseo's Dr. Richard Young and local knowledge of town and village highway superintendents, who were asked to identify their most severe erosion sites. The severity of each site was evaluated by measuring its physical properties such as area of eroded bank, stream hydrology, and geology. Limited grant funding over the years has allowed some of these sites to be repaired. The data from this program has been entered into the County's GIS database and was used to identify potential projects in this watershed.

Using aerial photos and SEAP data, potential sites were identified, mapped and listed (Figure 2 and Table 1 respectively). When funding becomes available, the sites listed need to be visited and evaluated by technical staff in order to a) determine the extent of the repair needed, b) from the site evaluation, define the specific needed repair project and cost, and c) rank projects according to an agreed prioritization criteria.

#### **Potential Stream Repairs Project Types:**

- **Stream Channel Modification**-As areas become more urbanized, stream channels are frequently straightened and stream banks are armored in order to accommodate additional growth. Channel modification projects attempt to restore a natural meandering path, gently sloped banks and strategically placed obstructions within the stream channel to create variable habitat.
- **Stream Buffers**-Urbanized streams frequently are disconnected from their flood plain or have development, such as pavement or lawns, right up to the stream bank. These factors have negative effects on the stability of the stream in terms of bank erosion, and stream health (as a result of runoff and lack of shade). Stream buffer projects create a vegetated zone along a length of stream that acts as a filter for incoming runoff and add space for the stream to meander and rise to minimize erosion and property damage.
- **Streambank Stabilization**—There are numerous streambank erosion sites in Monroe County which deliver significant quantities of sediment and associated pollutants to our local water resources. Streambank stabilization projects can help reduce the delivery of sediment and nutrients from bank erosion and include both hard armoring the banks but can also include bioengineered practices on smaller streams and tributaries.





Figure 1 . Streams need naturalized buffers to protect aquatic habitat and maintain water quality (Source, Philadelphia Water Department).

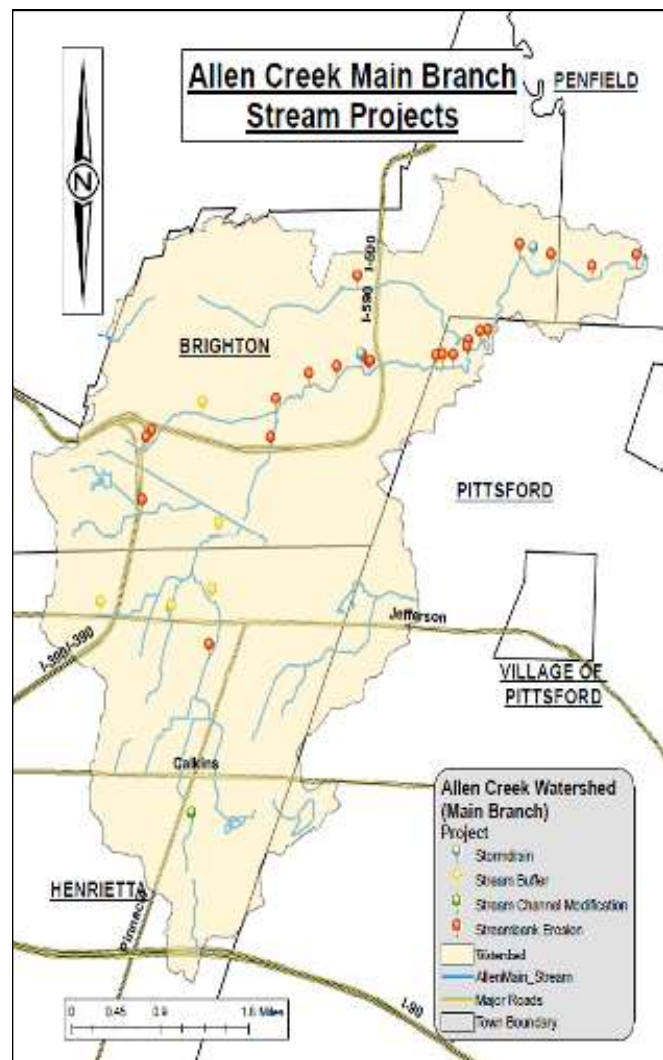


Figure 2. Locations of Potential Stream Repair Projects

**Table 1. Potential Streambank Repair Projects - Allen Creek main branch watershed**

<b>Location</b>	<b>Repair Type</b>
29 Hillsboro Road (Behind)	Streambank Erosion
84 Chelmsford Road	Streambank Erosion
2545 Monroe Ave	Streambank Erosion
2545 Monroe Ave (ROW)	Streambank Erosion
66 Edgewood Ave	Streambank Erosion
795 Allen Creek Road	Streambank Erosion
474 Allen Creek Road	Streambank Erosion
1915 Westfall Road	Streambank Erosion
299 Dale Road	Stormdrain
66 Edgewood Ave	Stormdrain
3000 Clinton Ave	Streambank Erosion
S Clinton Ave near radio towers	Streambank Erosion
Across S Clinton Ave	Streambank Erosion
1666 Winton Road S	Streambank Erosion
Westfall East of Roosevelt	Streambank Erosion
B/w I-590 E and W at Winton	Streambank Erosion
Across from 455 Castle Road	Streambank Erosion
43 Knollwood Dr	Streambank Erosion
Crossing of Woodbury over Allen Creek	Streambank Erosion
South of Woodbury bridge over Allen Creek	Streambank Erosion
Next to 519 Allen Creek Road	Streambank Erosion
At entrance to 519 Allen Creek Road	Streambank Erosion
130 Burrows Hills Dr	Streambank Erosion
Behind 69 Water View Cir	Streambank Erosion
1100 Jefferson Road (ROW)	Stream Buffer
1350 Jefferson Road	Stream Buffer
3131 Winton Road S	Stream Buffer
200 Canal View Blvd	Stream Buffer
Westfall Road (Brighton Park)	Stream Buffer
Behind 141 Glen Road	Streambank Erosion
Next to 33 Parkmeadow Dr	Stream Channel Modification







## DESIGN PACKAGE

3108 EAST AVE  
BRIGHTON, NY

JULY 22ND, 2022

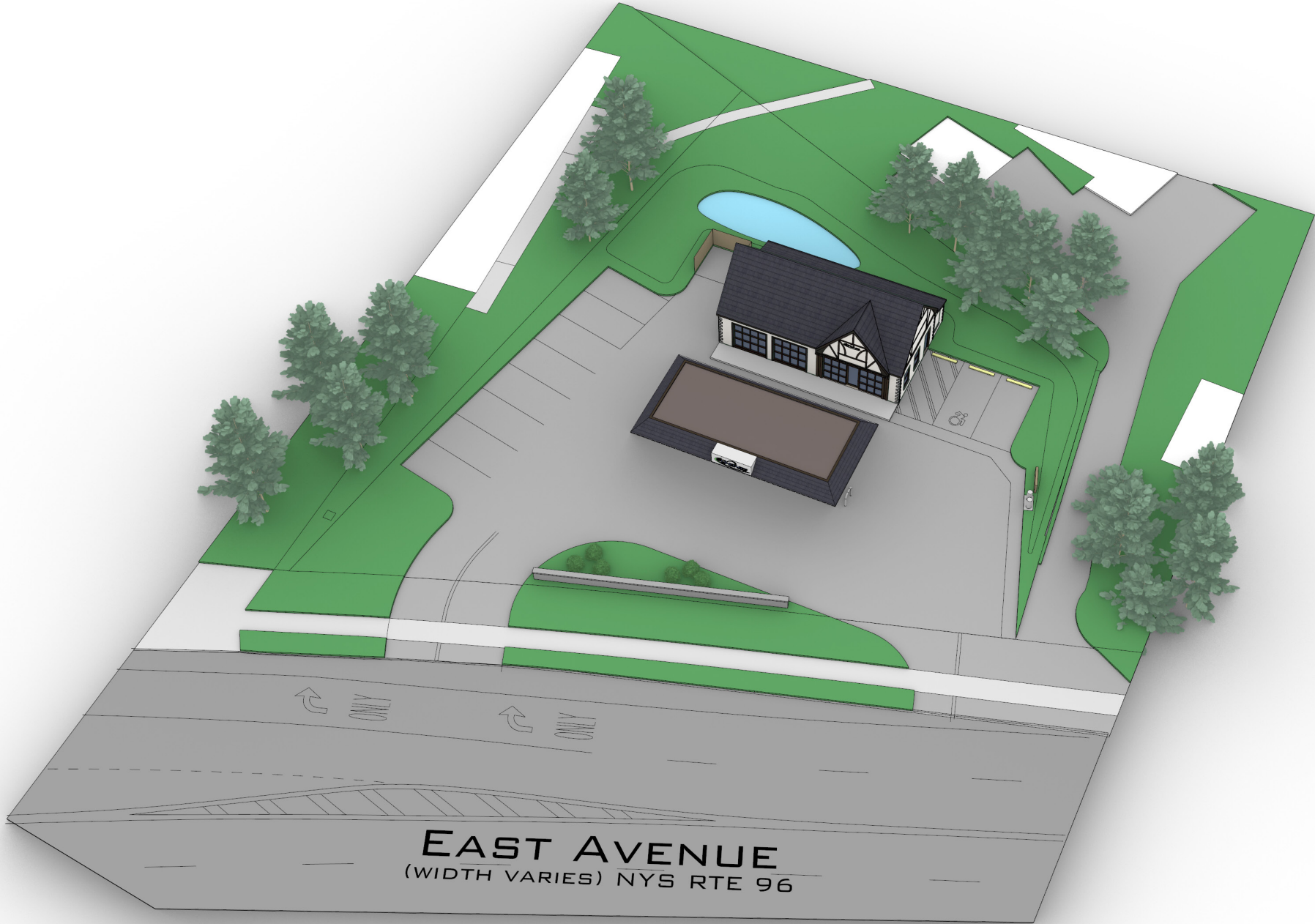


RENDERING VIEW





AERIAL VIEW





RENDERING VIEW



RENDERING VIEW





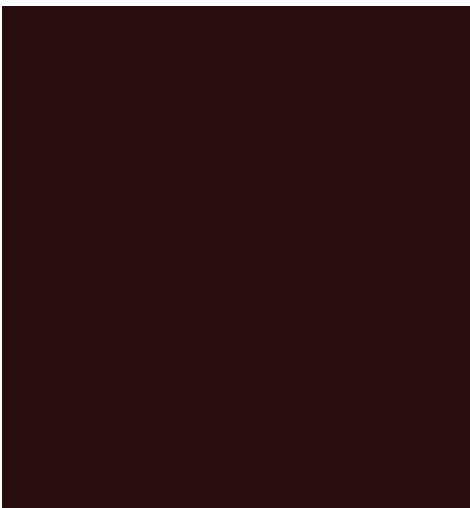
MATERIAL PALETTE



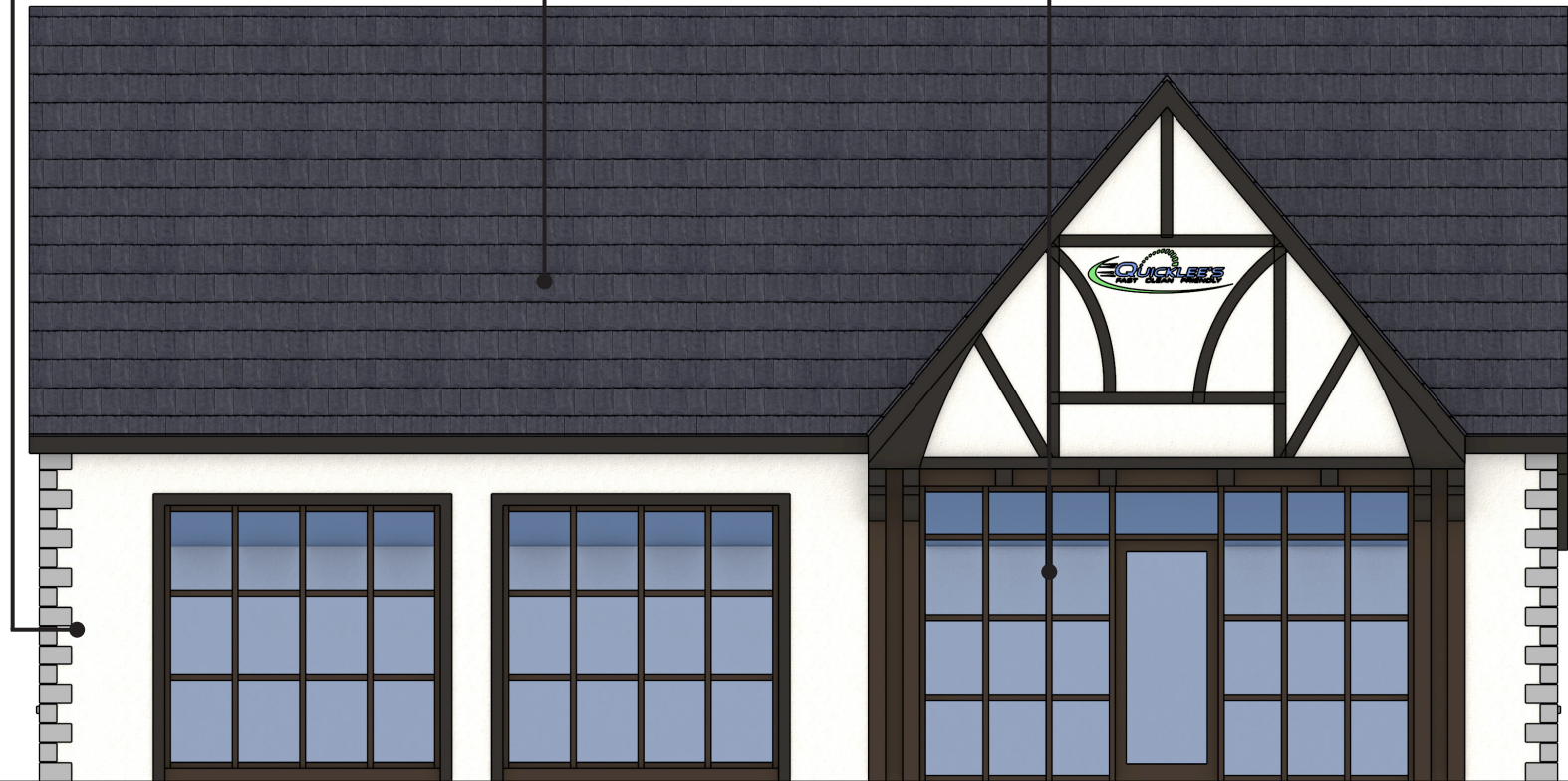
PAINTED STUCCO FINISH



NEW ROOFING TO BE REPLACED  
TO MATCH ORIGINAL SLATE OR  
ASPHALT SHINGLES



DARK WINDOW FRAME



FRONT ELEVATION



RENDERING VIEW



CANOPY ROOFING TO MATCH  
BUILDING'S ORIGINAL SLATE  
OR ASPHALT SHINGLES

EXTERIOR ELEVATIONS



WEST ELEVATION



NORTH ELEVATION



EAST ELEVATION



SOUTH ELEVATION